VERMONT

STATE OF VERMONT

AGENCY OF ADMINISTRATION

BULLETIN NO. 3.5

PROCUREMENT AND CONTRACTING PROCEDURES

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EFFECTIVE DATE: July 1, 2016 (Major Release - 7.1.16_V1)
REVISION DATE: December 12, 2018

Supersedes all previously issued versions

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I. AUTHORITY

In accordance with 3 V.S.A. § 2222(a)(2), this Bulletin establishes the general policy and minimum standards for soliciting, awarding, processing, executing and overseeing Contracts, as well as managing contract compliance.

The Office of Purchasing and Contracting (OPC) is responsible for making all purchases of goods/products, including fuel, supplies, materials and equipment for all Agencies. Further, OPC is responsible for administering solicitation, procurement and contracting, as set forth in this Bulletin.

The Secretary of Administration (Secretary or SOA) will update and reissue this Bulletin periodically. In lieu of an official re-issue, Addenda to this Bulletin may be issued and released, and shall have the same force and effect as an official issuance of the Bulletin. The current official issued version of this Bulletin, as posted on Agency of Administration's website, along with any subsequently released Addenda to this Bulletin can be found at: http://aoa.vermont.gov/bulletins/3point5

II. PURPOSE AND POLICY

This Bulletin applies to the procurement of all goods and services and the required documentation of such procurements, regardless of dollar amount, for all Agencies/Department, as defined herein, of the State of Vermont (SOV) government.

This Bulletin provides guidelines for conducting procurements and contracting and establishes minimum benchmarks and protocols to ensure the solicitation and awarding of contracts for services are completed with sufficient competition. The State process is designed to: ensure fair and open competition; guard against favoritism, improvidence, extravagance, fraud and corruption; ensure the results meet Agency needs; provide for checks and balances and oversee Agency procurement activities; and protect the interest of the State and its taxpayers.

Agencies and departments may develop individual processes and procedures applicable to their needs, in addition to the minimum stated requirements of this Bulletin.

III. DEFINITIONS

In addition to the definitions set forth in this Section, please note the glossary of acronyms attached to this Bulletin – Appendix V; Acronyms Used in This Bulletin.

Addendum: means an addition to or amendment of a bid solicitation (e.g., Request for Proposal (RFP) or other documents that formally solicit bids).

Agency: an Agency, department, commission, committee, authority, division, board, or other administrative unit of the Executive Branch, including the elected offices as well as those having express statutory authority to enter into contracts.

Agency-Wide Contract: a shared Contract used by departments or divisions within an Agency.

Appointing Authority: is an Agency head in accordance with AoA Bulletin 3.3, including those officers occupying appointive positions defined in 32 V.S.A. 1003 (b). "Appointing Authority" includes: (1) the exempt deputies of Agency secretaries and department commissioners; (2) elective officers and their deputies who head operating departments; and (3) exempt heads of divisions, boards, committees and commissions not reporting to a department commissioner or Agency

secretary. The Appointing Authority has management and oversight responsibilities for the solicitation, procurement and contracting process for services and for the ongoing oversight and monitoring of contract compliance through contract expiration or termination. Appointing Authority shall be responsible for compliance with the policy and procedural directives of this Bulletin.

Best and Final Offer (BAFO): a BAFO process is an optional step in the evaluation phase of the RFP process in which offerors are requested to modify their proposals.

Bid Documents: "Requests for Proposals" (RFP) or other documents that formally solicit bids, whether cost-based or otherwise, for services or products for the State.

Bidding Integrity: refers to the policy and practice intended to prevent a conflict of interest in bidding when an Agency receives assistance with the preparation or planning of Bid Documents from Contractors or Vendors, who later intend to participate as a bidder. Refer to the Policy at: http://bgs.vermont.gov/commissioner/adminpolicies/0034

Blanket Delegation of Authority (BDA): a formal document which delegates authority from the Office of Purchasing and Contracting to Appointing Authorities to make certain types of purchases directly. Agencies/ must follow the terms and conditions in their approved BDA. BDAs may be found at: http://bgs.vermont.gov/purchasing-contracting/forms/bda

Capital Lease: See section VI.CC.

Chief Information Officer (CIO): Secretary of the Agency of Digital Services; this refers to the State CIO, not an Agency CIO.

Commodity: Collective term given to tangible products purchased for the State.

Confidential Information: information deemed "confidential", or otherwise protected from unauthorized disclosure, by State or Federal law, such as, but not limited to, Federal tax information, personal health information protected under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), "education records" as defined under the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA), "personally identifiable information" as defined in 9 V.S.A. § 2430(5)(A) and other information exempt from disclosure under 1 V.S.A. § 317(c).

Conflict of Interest: a pecuniary interest of an employee or a Vendor, or the appearance thereof, in the award or performance of a contract, or such an interest, known to an employee, by a member of his /her current or former family or household, or a business associate.

Contract: any legally enforceable agreement by which the State purchases products or services needed to carry out a project or program. (The term Contract includes all such agreements whether or not characterized as a "contract," "agreement," "purchase order," "procurement," "license agreement," "maintenance agreement," "support agreement," or other similar term, but, does not include a legal agreement where the substance of the agreement meets the definition of a Grant or sub-award as defined in AoA Bulletin 5.

Contract for Service: means an agreement or combination or series of agreements by which an entity or individual agrees with an Agency to provide services under Contract, rather than as an employee. This shall include all such agreements whether or not characterized as a "contract," "agreement," "purchase order," "procurement," "license agreement," "maintenance agreement," "support agreement," or other similar term.

Contract Monitoring: any planned, ongoing or periodic activity or process that measures and ensures Contractor compliance with the terms, conditions, and requirements of a contract.

Contracting Waiver Plan: a written waiver request document, signed by the Appointing Authority and approved by the Secretary of Administration (SOA), granting specific on-going waivers, exceptions and/or limits to certain sections, terms or elements of this Bulletin.

Contractor: any party with which the State has a signed Contract.

Deliverable: the contracted product or service desired and expected to be received.

Executed Contract: a Contract is considered executed when the Contract, including all attachments, has been signed and dated by each party to the agreement.

Financial Transaction Contract: a Contract with an outside Vendor providing service to manage financial transactions for the State – either on-line or in person. Vendors include web-portal organizations, banks and other financial institutions. The Vendors handling these financial transactions (license, permit, or registration fees, etc.) for the State may be compensated for this service with a share of the gross fee (revenue) charged in the transaction, via an additional "convenience fee" added to the cost of the transaction, or a combination of the two.

Grant: means a legally enforceable agreement between an Agency (grantor) and a recipient (grantee or subrecipient) to carry out a program as defined in a Grant agreement. It does not include payments to a Contractor or payments to an individual who is a beneficiary of a program. When the Grant is funded with Federal funds, the relationship between the State and the grantee must meet the definition of a subrecipient and the award is called a sub-award.

Independent Contractor: as a general rule, an individual under Contract with the State is an Independent Contractor if the State has the right to control or direct only the result of the work and not what will be done and how it will be done. People such as doctors, dentists, veterinarians, lawyers, accountants, construction Contractors and subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally Independent Contractors. However, whether these people are Independent Contractors or Personal Services Contractors depends on the facts in each case, to be determined in accordance with IV.B.2. of this Bulletin.

Information Security: protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability of the information or systems (see 3 V.S.A. § 2222(a)(9)).

Information Technology (IT) Activities: includes: (A) the creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records; and (B) the design, construction, purchase, installation, maintenance, or operation of systems, including hardware, software, and services which are performed, or are contracted under this Bulletin to perform, these activities (see 3 V.S.A. § 2222(a)(10)).

Life Safety: means Contracts for abatement services of any kind; air quality testing; Contracts for elevator service; fire suppression system installation, service, or repair; Contracts for Services that could, directly or indirectly, pose a hazard to Contractors or employees of the State; or any other Contract for Service that could pose a significant increase to the SOV's liability or the SOV's ability to manage its risk.

No-Cost Contract: See Zero-Dollar Contract – section IV.A.6.

Non-Personal Service Contract: means a Contract for Service with an Independent Contractor.

Order of Precedence: the sequential legal hierarchy of the contract attachments used to determine the order in which each attachment controls in the case of dispute. Order of Precedence is particularly relevant when an Agency is including terms which are intended to supersede standard State terms or Contractor template terms which may be attached to the agreement.

Performance-Based Contracting: best practice that focuses on the measurable outputs, quality, and outcomes/results of the service or goods provided by the Contractor. Performance Based Contracts are designed to ensure that contract deliverables are well defined and provide that contract payment, as well as any contract extension, renewal, or price increase, is tied to the successful completion of defined deliverables

and accomplishment of desired performance (results). It may also include contract Retainage (as defined herein), which is held back until successful performance can be demonstrated.

Performance Management: a set of activities to ensure that outcomes are consistently being met and delivered in an effective and efficient manner; a methodology that should be employed to ensure the State receives the best contracted products, services and outcomes at a reasonable price.

Personal Service Contract: means a Contract for Service that is categorized as personal services consistent with 3 V.S.A. § 342 in accordance with procedures set forth in Section IV.B of this Bulletin 3.5. All other Contracts for Service are Non-Personal Service Contracts.

Prior: for purposes of this Bulletin, "prior" means "preceding in time or order," or more succinctly, "before." Thus, when an approval is required "prior" to the execution or commencement of a Contract, Agencies should construe this in all cases to mean the approval should be requested and received *before* the Contract is executed or work commenced.

Privatization Contract: means a Contract for Service valued at $25,000 or more per year, which is the same or substantially similar to and in lieu of services previously provided, in whole or in part, by permanent, classified State employees, and which results in a reduction in force of at least one permanent, classified employee, the elimination of a vacant position of an employee covered by a collective bargaining agreement, as further described in Section IV.D of this Bulletin 3.5.

Products: this term should be broadly interpreted and includes equipment, goods, materials, information technology hardware or software, supplies, printing and other commodities.

Proprietary Information: information of the State or a Vendor which may include any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, financial information or compilation of information which is not patented, which is known only to certain individuals within a commercial concern or the State, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it; also known as a trade secret. Proprietary information is exempt from disclosure under the State Public Records Act (see 1 V.S.A. §§ 315-320).

Retainage: A portion of Contractor's eligible payments withheld until the project is complete. The amount withheld strengthens the position of the State to enforce contract compliance and helps ensure that the work is completed without material error.

Retainer Contract (a.k.a. Blanket): a Contract which specifies the nature of the potential services to be rendered and the cost of the service. Retainer Contracts generally establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with State procurements, such as public notice of bid, and Vendor responsibility. Specific service requests are made through separate Statement of Work agreements written against this Contract. These are commonly used by the Agency of Digital Services (ADS)Department, Buildings and General Services (BGS), and the Chief Marketing Officer (CMO).

Secretary: means the Secretary of Administration (or SOA).

Services: this term should be broadly interpreted and includes Personal and Professional Services such as, but not limited to, construction, consulting, design and engineering, investment management, Information Technology activities, real estate services, and the maintenance of equipment.

Sole Source Contract: means a Contract that is entered into without first undertaking a competitive process described in this Bulletin.

State of Vermont Employee: an individual employed by the State of Vermont and paid through the State of Vermont payroll system in an exempt, classified, limited service, temporary, elected, or appointed position, excluding "Contractors paid on payroll". Workers who provide attendant care, personal care, companion care,

respite care, or support services to persons who receive financial assistance from the Agency of Human Services (AHS), and whose payroll service is provided directly by the State or by an intermediary payroll service organization acting under the authority of the State, shall not be considered State of Vermont employees except for the limited purposes of Workers' Compensation coverage and unemployment insurance. (See 33 V.S.A. § 6321.)

State of Vermont Retiree: an individual who has separated from State service and is eligible to participate in the State Defined Contribution Plan or Vermont State Employees' Retirement System.

Statement of Work (SOW): means a written statement in a Request for Proposal (RFP), simplified bid or contract describing the State's service needs and expectation.

Statewide Contract: a Contract negotiated by the Office of Purchasing and Contracting (OPC) and accessible to all Agencies of the State. To find out if a Contract exists that meets an Agency's need, contact the OPC or refer to the web site at: http://bgs.vermont.gov/purchasing-contracting/contract-info

Uniform Guidance: means 2 CFR Chapter I, Chapter II, Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Vendor: any party with which the State may sign a Contract.

Zero-Dollar Contract *(a.k.a.* No-Cost contract): means a Contract for Service in which a Vendor is willing to accept compensation for services other than direct payment by the State. For examples and further information refer to section IV.A.6.

[END SECTIONS I-II-III]

IV. CONTRACTS FOR SERVICE: PERSONAL SERVICE; NON-PERSONAL SERVICE; INDEPENDENT CONTRACTORS AND PRIVATIZATION

A. Contract for Services

Generally, State of Vermont employees should be used to perform essential governmental functions. However, there are circumstances which justify the use of Contractors to complete certain tasks, rather than employees, which may be determined at the discretion of the Appointing Authority. Once the determination has been made to enter into a Contract for Service, applicable State law and the policies and procedures set forth in this Bulletin will apply, regardless of amount.

Contracts for Service are further categorized into Personal Service and Non-Personal Service (Independent Contractor). Both Contracts for Service and Non-Personal Service Contracts may be determined to be Privatization Contracts in accordance with 3 V.S.A. § 341(3). The determination process as to whether a Contract for Service is to be categorized as Personal Service or Non-Personal Service and as Privatization is must be done in a specific order and must be incompliance with Federal and State laws.

There are various types of services which may be contracted, including the following examples:

1. **Professional Services Contracts:** Contracts with professionals such as physicians, nurses, lawyers, engineers, architects, certified public accountants, surveyors, mental health counselors, educators, consultants, investment managers and IT project managers. In addition to the State's standard insurance requirements, professionals must agree to carry professional liability insurance coverage in an amount not less than $1 million per claim/$1 million aggregate. Coverage limits will be subject to the approval of the Director of Risk Management (see Insurance Coverage Limit section IX.A.6)
2. **Construction Contracts:** Contracts for infrastructure construction, renovation or rehabilitation projects, including such State facilities as State-owned or leased buildings, roads and bridges.
3. **Marketing Contracts:** Contracts for advertising (print, radio, television (TV), and web/internet, but not to include employee recruiting); collaterals (brochures, fact sheets, folders, etc.); website design (not to include technical components); trade shows and events; direct mail campaigns; and sponsorships.
4. **Financial Transaction Contracts:** Contract with a bank or other entity to handle in-bank or on-line financial transactions. The majority of Contracts previously and incorrectly referred to as "No-Cost" are in reality "Financial Transaction" Contracts, which may result in "no net-cost" to the State. These Contracts involve an outside Vendor providing a service to manage financial transactions for the State – either online or in person. Vendors include web-portal organizations, banks and other financial institutions. The Vendors handling these financial transactions (license, permit, registration fees, credit card transactions, etc.) on behalf of the State, may be compensated from: the gross fee (revenue) charged in the transaction; via an additional "convenience fee" added to the cost of the transaction; or a combination of the two. Depending on the terms of the Contract, the funds may be remitted to the State:
    - via a lock-box, under agreement with the State Treasurer's Office;

- by the Vendor, at the gross amount, followed by payment of the fee from the State to the Vendor; or;
- by the Vendor, at the net amount, where the Vendor retains their compensation prior to remittance.

In the second bullet above, Agencies/ must execute the Contract for a maximum amount based on the estimated value the Vendor will be paid during the term of the Contract. Agencies shall process payments using a purchase order(s) (P.O.) against the contract. In the third bullet above, where the Vendor retains an amount equal to the additional convenience fee ONLY, a P.O. is not necessary as the State is not issuing payment to the Vendor.

5. **Zero-Dollar (or No-Cost) Contracts:** are occasionally used when a Vendor performs services for compensation other than direct payment made by the State. Zero Dollar Contracts must use the standard State contract forms, including the standard attachment C. Agencies must understand that simply because compensation is not made by invoice and direct payment, Vendors will still have performance obligations and pose risks to the State. Agencies are also cautioned to be aware of potential conflict of interest issues. Examples of Zero -Dollar (or "No- Cost") Contracts include the following:
   - the Vendor contracts with the State to perform services which benefit employees or consumers, and payment is derived from third party payers;
   - the Vendor performs services for the State in exchange for the opportunity to utilize State facilities or other assets (excluding data; see IV.A.4 above) such as Statehouse cafeteria food service; and
   - Financial Transaction Contracts.
6. **Information Technology Services Contracts:** see special IT Contract IV.E below.
7. **Other Contracts for Services:** Contracts with persons or legal entities not included in subsections (1) through (7) above.

B. Personal Service Contract

1. Description.

A Contract for Service can be either Personal Service Contract or Non-Personal Service Contract (Independent Contractor). Personal Service Contracts have characteristics of an employment relationship not commonly found in Independent Contractor relationships, but they may trigger certain requirements under Federal and State taxation and labor laws, such as the requirement to withhold Federal Insurance Contributions Act (FICA), and provide unemployment and Workers' Compensation coverage. Agencies must appropriately classify whether each individual performing services for the State is either as an Independent Contractor or an employee-like Personal Services Contractor.

2. Determination Process.

The general rule is that an individual is an Independent Contractor if the Agency/Department for which the services are performed, has the right to control or direct only the result of the work and not the means and methods of accomplishing the result. Appointing Authorities must determine whether proposed Contracts for Service meet **ANY** of the criteria below:

a. The Agency will supervise the daily activities or methods and means by which the Contractor provides services;

b. The services provided are the same or substantially similar as those provided by classified State employees within the Agency;

c. The Contractor does not customarily engage in an independently established trade, occupation, profession or business.

If a Contract for Service meets **ANY** one of these criteria Appointing Authorities should review Internal Revenue Service (IRS) Publication 15-A, attached to this Bulletin as Appendix I(f) which provides additional information on the differences between an Independent Contractor and an employee and gives examples from various types of occupations. If there is no reasonable basis to classify a Contractor as an Independent Contractor, Agencies must consider whether the services could be provided under an actual employment arrangement, such as permanent, temporary or limited service appointment. If employment is not feasible, then Agencies should consider restructuring the contractual relationship in a way that does not trigger Federal and State requirements applicable to employers. Personal Services Contracts (i.e., Contracts that do not pass the Independent Contractor test applied by the IRS) must be carefully structured to ensure compliance will all Federal and State requirements. Consult Appendix I(f) of this Bulletin and the Department of Human Resources (DHR) for guidance.

All Personal Services Contracts must be paid through the State of Vermont Human Resource (VTHR) payroll system.

C. Non-Personal Service Contract

Non-Personal Service Contracts generally have the characteristics of Independent Contractor relationships, where the State has only the right to control or direct the result of the work and not the details of what and how the work will be done. For example, individuals such as (but not limited to) doctors, dentists, veterinarians, lawyers, accountants, construction contractors and subcontractors, public stenographers, or auctioneers who exercise a high degree of independence in performing services and are in an independent trade, business, or profession in which they offer their services to the public.

D. Privatization Contract

A Privatization Contract is a Contract for Service valued at $25,000 or more per year that satisfies the criteria below:

(i) provides services which are the same, or substantially similar to, and in lieu of services provided, in whole or in part, by permanent, classified State employees;

AND

(ii) results in a reduction in force of at least one permanent, classified employee, or the elimination of a vacant position of an employee covered by a collective bargaining agreement.

NOTE: Unless otherwise permitted by applicable Agency statute, no Agency may enter into a Privatization Contract, unless the procedure set forth at 3 V.S.A. § 343 is followed.

E. Contracts for Information Technology

Information Technology (IT) Contracts can be Contracts for Service or Commodity Contracts. Contracts related to Information Security and Information Technology Activities can include the procurement of hardware and/or software (with or without a services component), system implementation, IT consulting services, license and other end user agreements, maintenance and support services, hosting services and Service Level Agreements (SLA). Further information specific to Information Technology contracting is located in the IT Guideline, located both on the AoA and OPC websites.

The IT Guideline covers, among other things, best practices for IT procurements and terms and conditions which may be needed to address issues particular to IT Contracts, such as, licensing, intellectual property, data ownership, and security concerns.

IT Contract for Service: Generally speaking, an IT Contract will be considered a Contract for Service subject to this Bulletin - including the Contract for Service determination process and the AGO certification - when a Vendor is providing professional services such as implementation, configuration, data migration, consulting and/or training, either on-site or off-site. An IT Contract for Service may include maintenance and support services that are provided on-site or by virtual access to State IT systems.

IT Commodity Contract: Generally speaking, an IT Contract will be considered a Commodity when the product or service is provided "as-is" to all consumers equally either as a physical software, license and other end user agreements, or hardware or as a subscription software as a service, platform as a service or infrastructure as a service. The Vendor will not have virtual access to State systems for purposes of maintenance and support.

Please refer to the IT Guideline and consult with OPC, ADS or the AGO with questions about whether an IT contract is more appropriately a Contract for Service or a Commodity.

F. Commodity Contracts

For purposes of this Bulletin, Commodity is the collective term given to tangible products purchased for the State. These include, but are not limited to, materials, equipment, parts, supplies, fuel, and printing. Hardware and software (license and other end user agreements) are considered commodities and some web-based services may be considered commodities, as discussed above. Procurement authority for commodities rests with the OPC.

V. AGO CERTIFICATION FOR BARGAINING AGREEMENT(S) COMPLIANCE

Each Contract for Services valued at $25,000 or more per year shall require certification by the AGO to the Secretary of Administration that such Contract is not contrary to the spirit and intent of the classification plan and merit system and standards under 3 V.S.A. § 342. A Contract for Services may be certified by the AGO if (a) all three of the provisions of Part 1 of this section are met; or (b) one or more of the exceptions described in Part 2 of this section apply.

Part 1 - AGO Certification

*First, a Contract for Services valued at $25,000 or more per year will be reviewed to determine if **ALL** of the following three requirements are met:*

1. The Agency will not supervise the daily activities or methods and means by which the Contractor provides services, other than supervision necessary to ensure the Contractor meets contractual performance expectations and standards;

AND

2. The services provided are not the same as those provided by classified State employees within the Agency (*note: this factor is applied to the Agency only and not to the State as a whole*);

AND

3. The Contractor customarily engages in an independently established trade, occupation, profession or business.

[Continued next page.]

Part 2 - AGO Certification

*If the proposed Contract for Services does not meet **ALL THREE** of the above Part 1 criteria, then **YOUR** Agency must consider whether the Contract meets **ANY ONE** of the following exceptions:*

1. The services are not available within the Agency or are of such a highly specialized or technical nature that the necessary knowledge, skills or expertise is not available within the Agency.
2. The services are incidental to a Contract for purchase or lease of real or personal property.
3. There is a demonstrated need for an independent audit, review or investigation; or independent management of a facility is needed as a result of, or in response to, an emergency such as licensure loss or criminal activity.
4. The State is not able to provide equipment, materials, facilities or support services in the location where the services are to be performed in a cost-effective manner.
5. The Contract is for professional services, such as legal, engineering, or architectural services, that are typically rendered on a case-by-case or project-by-project basis, and the services are for a period limited to the duration of the project, normally not to exceed two years or provided on an intermittent basis for the duration of the Contract.
6. The need for services is urgent, temporary or occasional, such that the time necessary to hire and train employees would render obtaining the services from State employees imprudent. Such Contract shall be limited to 90 days' duration, with any extension subject to review and approval by the Secretary of Administration.
7. Contracts for the type of services covered by the Contract are specifically authorized by law.
8. Efforts to recruit State employees to perform work, authorized by law, have failed in that no applicant meeting the minimum qualifications has applied for the job.
9. The cost of obtaining the services by Contract is lower than the cost of obtaining the same services by utilizing State employees. When comparing costs, the provisions of section 3 V.S.A §343 shall apply.

[END SECTIONS IV-V]

VI. ALTERNATIVES TO CONTRACTS FOR SERVICE AND SPECIAL AGREEMENT TYPES

If contracting for services is not appropriate, an Agency should consider using temporary employees, limited service employees or permanent employees to do the work. The State Department of Human Resources Personnel Policy and Procedure, Section 5.0 establishes the following guidelines:

- Permanent classified or exempt positions shall only be authorized by the Legislature.
- Limited service positions may be authorized by the Joint Fiscal Committee in connection with a Grant or by the Legislature itself.
- Temporary employees may only be hired with approval of the Commissioner of Human Resources in accordance with 3 V.S.A. § 331. Please consult with the Human Resources Representative for your Agency, to ensure hiring a temporary employee is in accordance with the statutory limitations.

A. Memorandum of Understanding or Memorandum of Agreement

A Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA), is not a Contract and is generally not enforceable. An MOU or an MOA **may only** be used between State Agencies and units of the Executive, Legislative and Judicial branches of Vermont State government, as required by Federal Agencies, or with municipalities (for example: towns, cities, school districts, fire districts, county units, etc.), or political sub-divisions (such as regional planning commissions) of the State. An MOU or MOA permitted hereunder, does require approval by the Appointing Authority and review by the AGO or internal counsel. If an MOU is proposed and is intended to have the effect of a binding and enforceable contract, an Agency should be using a Contract. Use of an MOU or MOA to circumvent this Bulletin is prohibited.

B. Grants versus Contracts

Contracts are normally used to acquire specific, clearly defined services and/or products from entities or individuals other than State Agencies or employees of the State. This includes situations where the State is seeking a service or a product or is offered a service or product for which it will not pay and may even acquire revenues, for example, wireless internet access at State facilities.

Grants are commonly issued for the direct support of persons and are also issued to organizations that perform public benefit activities with a high degree of independence. Grantees often adhere to programmatic requirements of a State or Federal program under which the Grant is issued and may be required to submit financial and programmatic reports to the granting Agency.

A Grant should only be used in the following circumstances:

a. The principal purpose is to support or stimulate an activity that benefits an individual (or group) rather than the Agency itself (or wards of the State) and there will be no substantial direct State oversight of the funded activity, other than providing guidance upon request, accumulating information on progress/results achieved, and periodic financial, programmatic and performance monitoring of the program or activity.

AND

b. When the Grant contains Federal funds, it meets the definition of a subrecipient relationship as found in the Federal Uniform Guidance (2 CFR Chapter I, Chapter II, Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

OR

c. Appropriated funds are characterized in the law or are designated in the Grant agreement as "grants," or designated by a grantor/funding organization as "grants."

Federal Uniform Guidance identifies the characteristics below to distinguish between a grantee (other than individuals who are eligible for this assistance) and Contractor relationships. These characteristics should be considered when determining whether to enter into a grant agreement or a Contract for goods and services:

Examples - Grantee (Subrecipient)	Examples - Contractor
Determines who is eligible to receive what Federal assistance	Provides the goods and services within normal business operations
Has its performance measured in relation to whether objectives of a Federal program are met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision making	Normally operates in a competitive environment
Is responsible for adherence to applicable Federal program requirements specified in the Federal award	Provides goods or services that are ancillary to the operation of the Federal program
Uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity	Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons

All of the characteristics listed above may not be present in all cases. Agencies must evaluate the features of each agreement individually to determine whether it appears more like a Contract or a sub-award. Refer to the subrecipient/Contractor determination tools and guidance provided on AoA Bulletin 5 for further information.

NOTE: Use of a federally approved indirect cost rate, or the de minimus allowed indirect rate as per the Uniform Guidance, is NOT required for State Contracts.

C. Capital Leases

No Agency, department or unit of State government is authorized to enter into a Capital Lease without the approval of the Secretary of Administration and the Treasurer. A Contract shall be considered a Capital Lease if it meets *one or more* of the following four criteria: (1) the lease term is greater than 75% of the property's estimated economic life; (2) the lease contains an option to purchase the property for less than fair market value; (3) ownership of the property is transferred to the lessee at the end of the lease term; (4) the present value of the lease payments equals or exceeds 90% of the fair market value of the property. Special accounting

rules apply to Capital Leases which requires their value to be included in the State's total debt. Refer to the Secretary's Directive Memo on Capital vs. Operating Leases for additional information.

NOTE: Accounting rules require the value of Capital Leases be included in the State's debt total. As such, they are subject to the annual debt limit set by the General Assembly. Use of a Capital Lease in order to avoid the requirements of either Bulletin 3.5 or Bulletin 5, is EXPRESSLY PROHIBITED.

D. Agreements to Receive or Access Confidential Information

On occasion a party other than the State of Vermont will request a copy of or access to Confidential Information held or collected by the State in circumstances where it is appropriate for an Agency of the State to allow or facilitate such request. A written agreement between the State and such a party is required in such a case to address many of the issues and risks inherent in sharing or disclosing Confidential Information (see Section IX.A.8). The agreement will not be subject to the competitive procurement requirements of this Bulletin, unless either: (a) the Agency is obtaining services from the other party in connection with the disclosure of Confidential Information; or (b) the Agency is conveying to the other party an exclusive right to receive or access certain Confidential Information. However, before entering into such agreements, Agencies must obtain approvals from the ADS, the AGO, and the Secretary of Administration (see Section X.B.).

[END SECTION VI]

VII. COMPETITIVE BIDDING AND THRESHOLDS

A. Competitive Bidding

Executive Order #3-20 and this Bulletin establish a statewide policy favoring a free and open bidding process for the selection of Vendors. Executive Order #3-20 states:

"The State of Vermont recognizes the important contribution and vital impact that small businesses have on the state's economy. In this regard, the state prescribes to a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services. The state also recognizes the existence of businesses owned by minorities and women and directs all state agencies and departments to make a good faith effort to encourage these firms to compete for state contracts."

Competition in the procurement process serves both State Agencies/Departments and potential bidders by ensuring the procurement process produces an optimal solution at a reasonable price, and allowing qualified Vendors an opportunity to obtain State business. In addition to complying with existing statutory and regulatory requirements, State procurements shall comply with the following general principles:

- **Notice:** It is the State's intent to ensure Vendors are aware of opportunities to compete for State business;
- **Process:** Clear and understandable process: make the process more accessible to Vendors with clearly defined procurement criteria;
- **Predictability:** provide a consistent process while conducting the procurement; and
- **Transparency:** document the procurement process clearly and consistently, including information gathering and decisions made relating to the procurement.

Although Vermont does not have a statute, rule or administrative requirement which mandates preference be given to State residents or products, all other considerations being equal, preference will be given to resident bidders of the State and/or products raised or manufactured in the State.

B. Bidding Monetary Thresholds

In some cases, State or Federal statutes or regulations require bidding at lower amounts. Such statutes shall take precedence over this Bulletin and shall be adhered to. Agencies/Department should consult with Agency counsel or the Office of the Attorney General if there is a question about the applicability of State or Federal law to Agency procurements.

1. Services Below $100,000 - Standard or Simplified Bid Process

For a Contract estimated to be under $100,000, an Agency may choose to follow either a Simplified Bid (described herein at section VIII.A) or Standard Bid process (described herein at section VIII.B). If the Agency is unsure whether a Contract will exceed the $100,000 threshold, to avoid rebidding the work, the use of a Standard Bid process is recommended.

2. Services Greater Than $100,000 – Standard Bid Process

An Agency may enter into a Contract greater than $100,000 only after adherence to a Standard Bid process (issuance of a formal Request for Proposals), as set forth herein (section VIII.B).

[END SECTION VII]

VIII. THE BIDDING PROCESS

A. Simplified Bidding

1. General.

A standard bidding process is always preferred. However, a "simplified bidding process" may be used when the anticipated Contract amount is less than $100,000. A simplified bidding process requires an Agency to develop a specific and detailed Statement of Work for the service and/or product desired and solicit price quotations from at least three potential Vendors known to provide the specified services or products. However, the Simplified Bid process does not require a public bid posting nor a public bid opening.

NOTE: Contracts that result from the Simplified Bid process may not exceed $100,000, without a written waiver from the Secretary.

2. Procedures for the Simplified Bid Process

a. Prepare written specifications before soliciting bids. Elements that should be included are:

- **i.** General statement of services required (Statement of Work)
- **ii.** Performance requirements;
- **iii.** Expectations regarding service location, schedule, including deadlines for deliverables and/or milestones, if applicable;
- **iv.** Other specific State requirements or conditions.

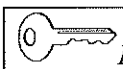
b. Solicit price quotations from 3 or more qualified Vendors. Price quotations may be obtained through: telephone or verbal quotes, facsimile quotations, e-mail quotes or written bids. All communications with the Vendors to obtain price quotes must be documented (emails, fax, notes from phone calls, etc.);

c. The Vendors solicited must understand they will be required to enter into a standard State Contract for Service, including Attachment C, should they be selected;

d. All records relating to the Simplified Bid process, including proposals and a record of the selection process, shall be retained in the Contract file in accordance with the Agency's records retention schedule;

e. The quotation most responsive to the selection criteria should be selected;

f. The Vendors solicited must understand that Vendor-required documentation, if any, must be made available at the time of bid and shall be subject to negotiation, should they be selected.



NOTE: If all price quotations received as a result of a Simplified Bid process exceed the $100,000 threshold Agencies must then engage in a Standard Bid process.

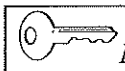
B. Standard Bidding ("Requests for Proposals" or "RFP")

1. General.

A standard RFP is required for all services which are anticipated to exceed a maximum Contract amount of $100,000 or more. An RFP is recommended for use when a bid process is more complex and the response requires the bidder to provide a solution or long term commitment. The RFP must contain all requirements and conditions of the particular procurement process. An RFP must contain a clear and concise Statement of Work and describe the criteria the State is going to utilize to select the Vendor. The ground rules need to be reasonable and create a level playing field applicable to all potential bidders, and the Agency needs to follow its own ground rules. This Bulletin provides basic guidance relating to the RFP documentation and process. Additional guidelines for the creation and issuance of RFPs, including a sample RFP template, and the most current versions of all State procurement and Contract forms are available on the Office of Purchasing and Contracting website at: http://bgs.vermont.gov/purchasing-contracting/forms.

Once an RFP or bid solicitation has been issued, and prior to the submission of bids, an Agency may issue an Addendum which may modify any aspect of the RFP. Except as clarified and amended by an Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation Addenda, remain as originally written. Such Addenda shall be publicly posted where the RFP is displayed and/or in accordance with instructions indicated in the RFP. Best practice is to have all Addenda acknowledged and/or signed and returned by all bidders with their proposals. If a deadline extension is granted to any bidder it must be granted to all of the bidders. The State does not accept late proposals.

When issuing an Addendum, be as specific as possible, noting the document, the project, the change and where the changes can be found. Addenda shall be published within a reasonable time prior to the submission of bids, to allow prospective bidders to consider the Addenda in preparing proposals.



NOTE: An RFP may only be amended by issuing a written Addendum prior to the submission of bids, and within a reasonable time period.

Disclosures for the purposes of bidding integrity are critical to bidding transparency. Refer to policy on-line at: http://bgs.vermont.gov/commissioner/adminpolicies/0034.

2. RFP Components

All State Agency RFPs must include the following components:

a. Cover Page: Includes: (1) Name and address of State contact person; (2) Due date, time, and location of responses; (3) Notification of the time and location for any scheduled bidders' conference, including a statement as to whether attendance is a condition of selection; and any other special requirements of the RFP process

b. Introduction: Explain the purpose and the nature of the services being sought, for example: "The purpose of this RFP is to obtain proposals from independent management consulting firms to perform a management study of the Division of Bulletin Creation."

c. **Brief description of the Agency:** Provide necessary general information about the Agency, if appropriate, such as: the type of government unit; the Agency's statutory authority; number of employees; population served; and mission or purpose.

d. **Statement of Work to be performed:** Include a Statement of Work (SOW) to be performed and/or products to be delivered. The purpose of this SOW is to provide prospective bidders with clear, concise and thorough information regarding the requested work. At a minimum, the SOW should include the following: (1) a description of the work to be performed; (2) a schedule (including when the work is to be completed, any interim completion dates and/or deliverables); (3) the expected outcomes and/or products, and related performance and/or quality standards. A thorough and well-structured SOW, together with specific detailed deliverables enhances the responsiveness of bidders during the solicitation process, promotes the reliability and comparability of proposals, and minimizes the need for contract negotiations and amendments. Depending on the complexity of the work to be performed, an Agency may want to consider hiring an expert to assist with the development of an appropriate Statement of Work for inclusion in the RFP. The appropriate investment of work at this stage of the contracting process will result in time savings and greater efficiency not only for the contracting process, but also the project ahead.

e. **Purpose and management structure:** Provide a brief overview of recent history leading to the decision to seek a Contractor. This overview will provide a better understanding of the purpose and context of the work. The bid document should include a statement about the contract management structure, with a description of how the Contract will be monitored by the contracting Agency. Bidders should understand the State is going to monitor their activities and performance in order to detect and prevent problems, and to ensure the contract terms are met and State expenditures are appropriate, effective, and efficient.

f. **RFP Response Requirements:** Clearly explain to bidders the procedural and substantive requirements of the bidding process. For example, the date, time, and address to which bids must be delivered must be explicitly stated. In addition, this section should include information regarding any on-location views of the work area, any pre-bid informational conferences, and any special requirements for submissions with the bid, such as bid bonds, qualification profiles, and resumes of key personnel performing the work, etc.

g. **Bidder Confidentiality and Access to Public Records:** All responses and other information disclosed in connection with an RFP become the property of the State and, once the resulting Contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, 1 V.S.A. § 315 et seq. Accordingly, the RFP must instruct the bidder to identify any material included in the response that is considered by the bidder to be proprietary or otherwise exempt from public disclosure in the event of a Public Records request, pursuant to 1 V.S.A. § 317(c). The bidder's response must include a written explanation for each marked section that would support a reasonable claim of exemption, such as, for example, a description of the proprietary nature of the information and the harm that would occur should the material be disclosed. Additionally, the RFP must instruct the bidder to include a redacted copy of its response. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response or price information be marked confidential. Should the Agency have concerns about the submitted redactions/explanations or lack thereof, the Agency may invite the bidder to provide sufficient explanation and/or appropriate redaction.

h. **Reservation of State's Rights:** Each RFP must reserve the following State rights:

- to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;
- to waive technicalities in submissions; (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded Contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

i. **Contract Elements:** The RFP should describe the key elements to be included in the Contract. The RFP shall include a copy of the Contract documents: Standard State Contract shell; Attachment A; Attachment B; Attachment C; Attachment D, and any other applicable Attachments.

Any other Contract terms or conditions which may be applicable to the particular service to be procured must be set out in the RFP. For example, with respect to contracts for IT services, the State requires language relating to: Information Security; Intellectual Property Ownership; Confidential Information; access to data; and cyber liability insurance. Agency counsel or the AGO should be consulted for advice on these additional contract terms.

For IT procurements, Risk Management shall be consulted prior to RFP issuance to determine cyber liability and breach notification amounts. Risk Management's determination regarding cyber liability and breach notification amounts, and Terms and Conditions must be identified in the RFP.

j. **Price quotation or bid proposal form:** The RFP, except for those using a Pre-Qualification selection process (section VIII.C), should include a price quotation form. The form should explicitly include the price components for the core services or products requested, and for each incremental phase of a project, if relevant. If contract extensions are contemplated, the quotation form should explicitly provide a detailed price quotation for each such extension. The form should allow for separate price quotations for optional services that an Agency may request.

k. **Worker's Classification; State Contract Compliance Requirement:** For all Contracts for Services, as well as all State construction and transportation projects, with a total project cost exceeding $250,000, the RFP must include language mandating the bidders comply with provisions and requirements of 2009 Act 54, Section 32: (1) for the Self-Reporting of information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable Agency; and (2) subcontractor reporting requirements. Requirements and forms are identified online and/or directly in RFP templates located on the Office of Purchasing and Contracting website at: http://bgs.vermont.gov/purchasing-contracting/forms.

l. **Construction and Transportation Projects:** For all State construction and transportation projects with a **total project cost exceeding $250,000,** the RFP must include language mandating the Contractor record a pay period census of workers onsite each day and upon request submit this record to

authorized State Agencies and shall become public information. "Total project cost" is defined as the cumulative direct and indirect cost incurred to complete the stated project goal, including planning, design and engineering services, materials procurements, construction services, and construction management and oversight.

m. Basis for selection: The RFP must clearly explain the selection criteria to be used. If certain factors are more important than others, the degree of such relative importance should be clearly stated and, if possible, quantitatively profiled.

3. Request for Information (RFI)

If an Agency does not have sufficient information from which to develop an effective RFP, the Agency may issue a RFI to obtain information on the subject matter of the eventual contract, such as capabilities, practices, systems, licenses, standards, etc. An RFI may be solicited, following the requirements in the section below "Public Notice Regarding the Standard Bid" or individual RFI requests may be sent directly to a representative number of organizations for information. With the information gained, the Agency should then be able to develop an effective RFP resulting in a number of valid competitive RFP responses.

NOTE: An Agency shall not negotiate a Contract directly with RFI respondents. Subsequent to issuance of an RFI, a Contract may only be developed in response to a separate RFP or a Simplified Bid, to ensure the integrity of the competitive process.

4. Request for Comment

A Request for Comment (RFC) is the process whereby the State issues a future/proposed RFP to the Vendor community in order to solicit input about all or a portion of the RFP structure, language, methodology (or any other aspect of the future/proposed RFP). The use of an RFC allows the Agency to gather information (comments or responses) and to revise the planned RFP if necessary and appropriate, in an effort to create an RFP that will yield the highest number of bidders and a successful outcome for the State.

5. Public Notice Regarding the Standard Bid

At minimum, all RFPs, RFIs and RFCs shall include posting on the Electronic Bulletin Board (EBB), operated by the Agency of Commerce and Community Development (ACCD) as part of the Business to Business registry. Instructions for posting to the EBB are available at: http://www.vermontbidsystem.com. However, all IT related RFPs, RFIs and RFCs will be posted by OPC (see IT Guideline).

The opportunity to bid for the proposed work must be broadly publicized. Other methods of solicitation include: advertising in newspapers; direct mailings to potential Vendors; direct mailings to Vendors on a prequalified list (section VIII.C); and/or publication in trade journals. It is important for an Agency to maintain a list of those entities or individuals requesting bid documents.

The time between the initial public notice on the EBB (and other methods of solicitation) and the opening of bids must be at least five business days. For RFPs with a relatively complex Statement of Work, allowing potential Vendors a longer response time is highly recommended, to ensure well-constructed bid responses.

6. Pre-Bid (Bidders') Conferences and Adjustments to Bid Documents

RFPs for large or complex projects shall require a pre-bid meeting (conference). The purpose of the pre-bid meeting (conference) is for the State to have an opportunity to review the Statement of Work and other RFP documents with bidders to ensure the State and the Vendors fully understand the requirements of the RFP. If a pre-bid meeting (conference) is required it must be identified in the RFP and describe the form and format the meeting shall take (i.e. in person, conference call, etc.). During the meeting, Agencies may provide an overview of the requirements, opportunity for Agencies/Departments and Vendors to pose questions, and hear responses to questions related to the RFP. All information exchanged at the meeting, answers to questions and clarifications given must be documented, and posted to the EBB and/or as indicated in the RFP. The documentation must include a statement that bidders may not rely on any verbal responses.

7. The Bid Opening

A public bid opening and reading of bids should be the norm and is required for Contracts over $100,000. Two staff members from the Agency administering the bid process should attend the bid opening. Bids received after the established submission deadline shall be returned unopened to the bidder. The Agency administering the bid process may waive technical non-compliance when doing so is in the best interest of the State, and with the approval of the AGO. Such waivers must be fully documented and included in the Contract file.

NOTE: A late bid may NOT be waived as technical non-compliance.

8. Contractor Selection, Documentation and Apparent Conflict of Interest

a. ***Selection***:

i. The bid most responsive to the selection criteria established in the RFP should be accepted. Agency staff with the relevant subject matter expertise should review each proposal for responsiveness in accordance with the requirements outlined in the RFP. When appropriate, an Appointing Authority (Agency) may establish a contract selection committee to review the bids.

ii. If it is determined by the Agency that an on-site interview is required prior to a final selection, the sole point of contact as stated in the RFP should contact finalist(s) to schedule interviews and to provide an agenda for the interviews.

iii. An Agency may request a Best and Final Offer (**BAFO**) from a bidder or several bidders in an effort to award a Contract in the best interest of the State. The Agency may consider requesting a BAFO when:

- no single proposal addresses all the specifications;
- all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
- additional information is needed in order for the evaluation committee to make a decision;

- differences between proposals are too slight to distinguish; all cost proposals are too high or over the budget;
- multiple Contract awards are necessary to achieve regional or Statewide coverage for an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed.

iv. Agencies shall post public notification on the EBB, of the Contract award after the Contract has been fully executed.

b. ***Documentation***: A complete copy of the RFP, Vendors solicited, price quotations, bids received, and written selection justifications must be placed in the contract file. When other than the lowest responsible bid is selected, for instance RFPs that include a specific selection criterion; the file must include written documentation consistent with the RFP selection criteria justifying the selection. Please reference the Contract File Checklist for a complete list of documents required to be retained.

c. ***Apparent conflict of interest***: If a reasonable person might conclude a Contractor was selected for improper reasons, the Appointing Authority should disclose this fact in writing to the AGO and the Secretary and document the reasons why selecting the desired Contractor is still in the best interests of the State.

C. Pre-Qualifying Vendors for Statewide or Retainer Contracts

To streamline procurement for work routinely bid out, an Agency may employ prequalification procedures as a means of predetermining eligible Vendors from which an Agency may accept bids and proposals. Depending on the type of procurement and contract, prequalification may vary in formality and complexity. Prequalification may be determined through a structured process supported by approved specifications.

Pre-qualified Vendors must be identified through a standard solicitation process through which the Agency publicly solicits Vendors seeking the opportunity to be prequalified. This may take the form of placement on a pre-qualified list or award of a retainer-type contract, customarily with a maximum dollar amount, set duration, and providing no guaranteed assignment of work for the contract term. The Agency should establish clear criteria necessary for potential Vendors to be included on the pre-qualification list. Additionally, during the period between formal list revisions, the Agency must maintain an ongoing process that allows additional Vendors to request review and inclusion on the pre-qualification list at least every two years. All Vendors determined qualified by the Agency, and who so request it, should be included on the pre-qualified list.

An Agency's internal procedures and this Bulletin should be consulted prior to utilizing pre-qualification to determine if established or recommended procedures exist. An Agency shall document their pre-qualification procedure in writing and in accordance with this Bulletin.

D. Exceptions and Waivers

1. Sole Source Contracts

Use of "Sole Source" or "no-bid" Contracts is contrary to the competitive process supported by the State. Sole Source Contracts will be avoided except when no available alternative exists. A clear and convincing link must exist between the service requirements sought and the reasons why the Agency

deems the Sole Source Vendor or Contractor "the only one capable" of meeting the requirements. Possible Sole Source uses might include:

- an unusual and compelling urgency, such as when health, public safety, or the conservation of public resources is at stake;
- situations posing extreme financial consequences to the State;
- legislatively mandated situations; and,
- when required by a warranty or proprietary license agreement.

a. Sole Source Contract $10,000 or Less

The Appointing Authority may enter into a Sole Source Contract for $10,000 or less providing sole source justification exists and is documented in the contract file, and the Contract process complies with all other aspects of this Bulletin.

b. Sole Source Contract Greater than $10,000 (non-emergency)

In other than an emergency situation, an Appointing Authority desiring to enter into a Sole Source Contract having a value greater than $10,000 must obtain approval to Sole Source from the Secretary of Administration. Secretary approval may be requested by submitting a proposed Sole Source justification memo to the Department of Finance and Management (F & M) at least two weeks before circulation of the Form AA-14 and contract package for required approvals. If the Sole Source request involves Information Security or Information Technology, the justification memo must be approved by the CIO before it is approved by the Secretary of Administration. A copy of the approved Sole Source justification must be retained in the contract file.

Approval to Sole Source, when required by this section, must be obtained from the Secretary before a proposed Sole Source Contract is circulated for additional approvals as may be required under this Bulletin. A copy of the approved Sole Source justification must accompany the proposed Contract when circulating for approvals.

c. Sole Source Contracts in Verifiable Emergency Situations

In an emergency situation, a Sole Source Contract may be executed in accordance with Agency protocols and applicable law, **but** the Contract and the justification **must** be forwarded to the Secretary and the AGO within 10 business days of the contract execution. It is recommended the Agency notify the assigned Finance and Management Budget Analyst as soon as the emergency is known.

It is insufficient to justify a Sole Source agreement by stating that "this is the only Vendor/Contractor/party" qualified, or able to do the work. Such assertions must be verifiably documented. Acceptable examples may include: the single authorized agent for warranty work; the only entity or individual properly licensed within the 4-hour response time area; a legislatively-determined party; or a federally-mandated party.

d. Mandatory Language for All Sole Source Contracts

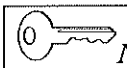
As directed by 3 V.S.A. § 374, all Sole Source Contracts executed on or after December 16, 2018, shall include a certification by the Contractor as to its compliance with the campaign contribution restrictions set forth in 17 V.S.A. § 2950. To implement this requirement, a Contract procured as a Sole Source, and every amendment to the Contract, must include language that identifies the contract as a sole

source, along with the requisite Contractor certification. Therefore, all Sole Source Contracts, regardless of dollar amount, and any amendment to the Contract, shall include the following language:

> "This Contract results from a "sole source" procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950."

To facilitate compliance with this requirement, it is incumbent upon the contracting Agency to ensure that the above language is included whenever executing or amending a Contract that has been procured as a Sole Source.

NOTE: A Sole Source Contract greater than $10,000 may not be circulated for other required approvals (e.g., AGO, CIO), unless and until a Sole Source justification has been approved by the Secretary (and CIO if Sole Source for IT), and a copy of the approved justification must accompany the proposed Contract.



NOTE: Failure to allow sufficient time to follow the bidding and procurement process is not considered an emergency, and is not a justification for the use of a Sole Source Contract.

2. One-Time Waivers (Other than Sole Source)

The Secretary may waive provisions of this Bulletin on a case-by-case basis pursuant to a written request from an Appointing Authority. Any request must specify the basis for the request and reference the Bulletin section(s) and language or variations from the standard State contract provisions for which the waiver is sought. Waiver approval must be granted by the Secretary prior to other required approvals and the signing of the contract by either the State or the Contractor. Copies of all waiver requests granted by the Secretary must be retained in the Contract file.

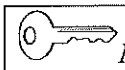
3. Agency/Department Contracting Waiver Plan

Agencies/Department may develop a written Contracting Waiver Plan (Plan) which shall propose acceptable alternatives to non-statutory requirements of this Bulletin. The Plan must be submitted to the Secretary for approval. Development of a Plan provides a process to request modifications for certain classes of Contracts or requirements that cannot reasonably be accommodated within the policies of this Bulletin, or which will allow for more efficient operations without an undue increase in risk to the State.

Plans must: a) be submitted on the Bulletin 3.5 Contracting Waiver Plan template; b) detail the referenced section(s) and Bulletin language for which a waiver(s) or modification(s) is requested, (c) provide detail of an acceptable alternative (if appropriate), and (d) be signed by the Appointing Authority. A Plan must clearly delineate any proposed deviations from this Bulletin and include written justification for each change requested. The Secretary may approve or reject the Plan, in part or in whole.

Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or upon a request from the Secretary, and must be resubmitted for the Secretary's approval within those 90 days.

A Plan must be one unified form detailing all waiver elements, and must be updated to include additional waiver items as they are requested. The Secretary will indicate approval or disallowance by individual change and return an executed copy of the Plan to the requesting Agency/Department.



NOTE: Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or upon a request from the Secretary, and must be resubmitted for the Secretary's approval within those 90 days.

[END SECTION VIII]

IX. CONTRACT DRAFTING

A. Drafting the contract

All Contracts, regardless of dollar amount, must comply with the drafting standards below:

1. General Contract Restrictions

A Contract shall not:

- **a.** require the State to indemnify a Contractor;
- **b.** require the State to submit to binding arbitration or otherwise waive the State's right to a jury trial;
- **c.** establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit;
- **d.** waive the certifications regarding tax status, child support, use of State funds, or equal opportunity clauses, as are required by State law;
- **e.** restrict the ability of the Contractor to hire State employees without the prior written permission of the Department of Human Resources (DHR);
- **f.** designate a governing law other than the laws of the State of Vermont;
- **g.** constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution;
- **h.** limit the time within which a legal action may be brought;
- **i.** include a provision for automatic renewal ("evergreen" clause); or
- **j.** include a copy of the RFP or RFP response.

2. Standard State Forms (Contract Templates and Attachments)

NOTE: Standard State Forms and Templates are routinely updated. Agencies/Departments are responsible to ensure the use of the most current form/template at all times. The current in-force versions are maintained by OPC at: http://bgs.vermont.gov/purchasing-contracting/forms. ***Use of outdated forms/templates may result in delays in obtaining required approvals or rejection.***

a. Short Form Contract may be used for certain services below $25,000

While use of the standard Contract form and full Attachment C is preferred, the Appointing Authority may authorize the use of the standard Short Form Contract and Short Form Attachment C ("Short Form") for limited purchases of service not exceeding 12 months and $24,999.99. Amendment(s) to contracts that either increase the maximum price to $25,000 or more, or extend the term of the Contract beyond 12 months, must be executed using the Standard Contract for Service template and shall be subject to the applicable review and approval process.

The Short Form shall not be used for services related to life safety, transport of persons, hazardous materials, construction, data usage or sharing, access to confidential information, services of licensed professionals, a Zero-Dollar Contract, and/or a Financial Transaction Contract. As with all Contracts, a current Certificate of Insurance (COI) for the Contractor is required on file, including professional liability insurance, if

applicable. Multiple "one-time" purchases entered into within the same 12-month period, and done intentionally, in order to avoid the requirements of this Bulletin are expressly prohibited.

The Short-Form is designed to expedite Contract drafting for low risk, small dollar procurements, and should be completed according to the instructions included within the form. The Short Form may not be used when additional Attachment(s) or terms and conditions are required. Any questions about whether or not a contract is eligible for the use of the Short Form should be directed to Risk Management at: SOV.riskhelp@vermont.gov.

NOTE: The Short Form Contract may only be used for one time services below $25,000 that do not exceed 12 months' duration. If the maximum amount exceeds $25,000 the State requires the use of the standard Contract for Service and the full Attachment C, etc. (see Appendix I for Short Form Contract and Short Form Attachment C).

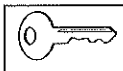
NOTE: Regardless of the contract amount, the Short Form Contract may not be used when contracting for life safety, transport of persons, hazardous materials, construction, data usage or sharing, and/or access to Confidential Information.

b. Standard State Contract Forms (Templates and Attachments)

All Contracts not eligible to use the Short Form Contract, must use one of the current standard Contract templates ("shell") and adhere to the Attachment "letter" assignments for the standard Contract Attachments as follows:

- **Attachment A** – Statement of Work (Appendix II);
- **Attachment B** – Payment Provisions (Appendix III);
- **Attachment C** – Standard State Provisions for Contracts and Grants ("terms and conditions");
- **Attachment D** – Approved Modifications to Attachment C, modifications to a Contractor document or other required terms and conditions (if necessary) (Appendix IV);
- Additional Attachments may be lettered as necessary.

All modifications to Attachment C's standard provisions shall be included in Attachment D which is to be referenced under the standard Contract shell "Order of Precedence". All such modifications require pre-approval by the AGO before the Contract is executed by the Appointing Authority. Modifications to the insurance or audit provisions in Attachment C must be approved by the Director of Risk Management or the Auditor of Accounts, respectively, in advance of contract execution.



NOTE: Under no circumstances may the actual Attachment C document itself, be modified. When changes or modifications are necessary, Agencies shall use Attachment D.

Additional terms and conditions deemed necessary to the Contract shall be included in Attachment D. All requests and approvals for such modifications must be documented and retained in the contract file. For examples of common additional terms and conditions refer to Appendix IV.

3. Standard Contract Elements

a. Parties to the Contract

The Parties to a Contract are: 1) the person(s) or legal entity responsible for performing the work, and 2) the State Agency or department responsible for Contract compliance, monitoring and payment. The legal information (name or business name from IRS Form W-9) must be the same as the party in the Contract. A valid W-9 must be dated within six months prior to the Contract effective date. Agency staff should work with their business office to review the W-9 and determine if the Vendor is active in Vermont Integrated Solution for Information and Organizational Needs (VISION), the Statewide financial system, with the correct legal name and remittance address. Refer to the VISION Vendor Request Form, Form W-9 *and Vendor* FAQs.

NOTE: If the Contract includes work being assigned to a sub-contractor, see section XII sub-contracts of this Bulletin.

b. Contract Duration (Term)

Contracts must have a specific start and end date (term), defining the legal period in which the Contractor is authorized to perform the work, and for which the State will be obligated. The use of "Upon Execution" is not allowed. Including language that automatically renews or extends the Contract beyond the stated end Date ("evergreen clause") is strictly prohibited.

An Agency should carefully consider what period of time is appropriate for contract performance. Considerations should include the nature of the services and the status of any particular industry or market involved.

The base Contract term is a period of up to two years. In certain situations, such as when purchasing services for which there is an ongoing need, the State may want to extend the Contract beyond a base two-year period. Language may be added to preserve the option(s) to extend for two additional one-year periods, for a total maximum of four years.

For IT Implementation contracts (as defined in the IT Guideline) the base contract term may include the period of implementation services, plus up to five years for annual operating costs (maintenance and service). Any request for a waiver of this provision for a longer period of time must be approved by the CIO before it is approved by the Secretary of Administration.

Agencies must plan accordingly to allow sufficient time for all required approvals and final contract execution BEFORE a Contactor begins work. Agencies must monitor contract end dates well in advance to allow sufficient time to prepare and process the required re-bidding. This re-bidding and resulting award constitutes a new Contract (even if the re-bid award goes to the same Vendor) and must have a new VISION contract number. Failure to allow sufficient time to re-bid a Contract is not an acceptable justification to request a Sole Source waiver.

NOTE: In certain instances, Amendment(s) to exercise pre-defined option language (extension of duration and related price increase) may not require review and approval by the AGO and Secretary (see section XIII.B).

NOTE: Under no circumstances may any Contract be amended to extend beyond four years, in total, without a specific waiver approved by the Secretary.

c. Maximum Amount

All Contracts must clearly disclose the maximum dollar amount for services, supplies, commodities and expenses on a "fixed price" basis or a "not to exceed" maximum dollar amount.

d. **Total Number of Pages**

The Contract and Attachments shall be sequentially numbered within the total pagination, for example, "Page 1 of 10", with the total number of pages (in this example, 10), stated in the Contract.

For long, complex contracts requiring numerous Attachments, such as construction and transportation contracts, Agencies may choose to number the contract and each Attachment, within the pagination for each. For example, Contract pages 1-2, Attachment A, pages 1-1500; Attachment B, pages 1-2; Attachment C, pages 1-4; Attachment D, pages 1-2; Attachment E, pages 1-51; resulting in a total of 1,561 pages. However, the total number of pages shall be stated in the Contract.

4. Description of the Work and Compliance (Attachment A)

a. Statement of Work

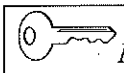
All State Contracts must describe the work to be performed in clear, concise and complete statements. Attachment A of the standard State Contract should be used to detail the work to be performed or products to be delivered by the Contractor. A well written description will include the schedule for performance, identification of project deliverables, deliverable milestones, and standards by which the Contractor's performance will be measured. This description of the work may also be referred to as the Statement of Work, Specifications of Work, Scope of Work or Subject Matter. Please refer to Appendix II for further guidance. The deliverables and milestones should be used to inform the payment terms in Attachment B. Attaching RFPs and RFP responses to contracts is not permitted. RFP responses can be long and complicated and may include both unnecessary information and introduce internally inconsistent terms within the Contract.

b) Contract Compliance Monitoring

The level of required contract compliance monitoring, if applicable, should be based on the assessment of the risk for delay or failure to deliver the services. In assessing the risk, Agencies should consider factors such as: amount of funds involved; contract duration; contract complexity; history of the Contractor with State government; amount of subcontracting involved; and other relevant issues. Whether or not

liquidated damages, service credits and/or Retainage are part of the Contract, the document should include a section that describes specifically how the Agency will monitor the contract for compliance.

Types of compliance monitoring processes and steps may include: (i) periodic Contractor reports; (ii) invoice reviews; (iii) on-site visits; (iv) scheduled meetings; (v) audits; (vi) independent performance reviews; (vii) surveys of users/clients; and (viii) post-contract audit or review. This section may also describe a process for identification, discussion, and resolution of disputes between the Contractor and the State, both during the Contract duration and after expiration.



NOTE: Additional guidance on Statement of Work is available in this Bulletin as Appendix II: Attachment A – Statement of Work Guidelines.

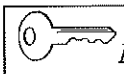
5. Payment Provisions (Attachment B)

a. ***Payment Amounts and Frequency:***

All State Contracts must describe how, when and under what circumstances Contractors submit invoices to the State. Attachment B of the standard State Contract should detail:

- Requirements and schedule for the submission of Contractor invoices;
- Whether payment will be made based upon: rates; hours worked; delivery of a service, or State acceptance of a deliverable;
- Whether payment or any portion thereof will be tied to the achievement of performance outcomes and/or measures;
- What documentation (bills, invoices or other proof of work) the Contractor must provide when invoicing the State;
- When and how much the Contractor will be paid, and what deductions, if any, will be made from payments; and
- The payment terms of Net 30 days, from the receipt of a complete and error free invoice, are the generally accepted payment term standard, in accordance with Finance and Management Policy #5 ~ Payment Terms.

NOTE: Additional guidance on payments is available in this Bulletin as Appendix III: Attachment B Payment Provision Guidelines.



NOTE: Contractor shall be paid based on documentation and itemization of work performed and included in invoicing, as required by 32 V.S.A. §463. If based on hourly prices, invoicing must contain a summary of the work performed and details, including dates and hours of work performed, and rates of pay for individuals.

NOTE: Advance payments are strongly discouraged. First, advanced payment for work that is not performed or not satisfactory may not be recoverable without filing a lawsuit. Second, in the case of Contractor default and insolvency, the advanced payment may be subject to bankruptcy proceedings and may not be recoverable.

b. ***Performance Measures and Accountability***

In accordance with 3 V.S.A. § 2313, State Contracts and Grants should include performance measures which enable the contracting Agency/Department to hold the Contractor/grantee accountable and assess the performance of their services and deliverables under the terms of the Statement of Work.

Contracts should include provisions, which link specific performance measures to the outputs, quality, and outcomes of the services provided. Contract payment should be expressly contingent upon State review, approval and acceptance of contract deliverables. In very specific language, the Contract should detail how the Contractor is accountable for the work or product. These specific performance measures provide objective standards for determining if the Contractor has successfully completed the contractual obligations and if the delivered services or products meet such standards.

The contract's Statement of Work to be performed (Attachment A), as noted in Appendix II, must specify the time line for the deliverables, including interim steps, and measurable standards to be maintained during the contract performance period.

c. ***Retainage***

The purpose of Retainage is to ensure the State retains sufficient funds in the event a Contractor does not perform in accordance with the specific requirements in the Contract. Retainage should be considered for all Contracts. When Retainage is utilized, the Contract sets an amount of funds to be withheld from each payment to the Contractor. The terms under which Retainage is paid must be detailed in the Contract. Retainage should generally be withheld at a minimum of 10% of the Contractor's invoice amount. The Retainage language in the Contract must specify any additional conditions and requirements that must be met prior to the release (payment) of the Retainage, in whole or in part. Such conditions might include contract close-out, final State acceptance and the submission of a separate Retainage invoice.

d. ***Liquidated Damages***

The term "Liquidated Damages" refers to an amount of money the parties agree, at the time of contract formation, shall be payable by the Contractor to the State as compensation for delay or failure to meet particular performance standards. Liquidated damages operate as an agreed-upon substitute for any actual damages suffered as a result of a breach, thereby enabling the parties to avoid litigation, and to continue performance under the Contract.

An amount fixed as liquidated damages must reflect a reasonable approximation of probable damages resulting from a particular breach and shall not operate as a penalty to punish the Contractor for late or substandard performance.

Liquidated damages are not appropriate for every Contract. Agencies considering whether to include liquidated damages provisions in a Contract shall consult with Agency counsel or the AGO.

e. *Reimbursable Travel Expenses*

The State strongly prefers Contractors include reimbursable travel expenses (mileage, airfare, lodging, meals, etc.) as part of their fixed or hourly rate(s), or include a fixed travel allowance amount. Reimbursing detailed invoices for travel expenses is administratively burdensome, requiring additional documentation, review, and accounting transactions in VISION. However, the amount the Contractor includes in the rate or as an allowance, must be determined to be reasonable. Reasonableness should be based on: 1) the agreed Statement of Work specifications for number of on-site days, weekly/monthly trips, over-night stays, mileage, etc.; and 2) standard travel costs, with consideration for Federal funding requirements, any limits that may apply, or per diems, such as Federal General Services Administration (GSA) rates for meals and lodging.

In cases where the reimbursement of detailed travel expenses cannot be avoided, such as when required by certain industries or professions, Agencies must obtain a waiver from the Secretary, or have such waiver in their approved Contracting Waiver Plan, prior to including reimbursable travel expenses in any Contract.

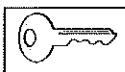
6. Insurance Coverage Limits

Appropriate insurance coverage limits are required in a Contract to protect the State's interests. Standard Insurance Coverage provisions are included in Attachment C and are deemed appropriate to cover most contractual situations. However, Professional Service Contracts may require additional types of insurance such as professional liability or IT professional liability. Higher insurance limits may be required, such as when relatively dangerous or hazardous activities are contemplated. Conversely, reduced limits or decreases in coverage may be appropriate. Agencies/Department shall consult with the Director of Risk Management for guidance and approval, when considering the appropriateness of insurance requirements. All changes to the Standard Insurance Coverage limits in Attachment C require the prior approval of the Director of Risk Management. Such approval must be documented and retained in the contract file along with a current Certificate of Insurance (COI).

Special care should be paid to Workers' Compensation coverage for Contracts with out-of-state Vendors. Vermont statute requires insurance carriers be specifically licensed to write Workers' Compensation coverage in Vermont. Out-of-state Vendors may have Workers' Compensation coverage valid in their home State, but their carrier may not be licensed to cover Workers' Compensation for work actually performed by their employees in Vermont. Agencies may verify whether an out-of-state Vendor's Workers' Compensation carrier listed on the Certificate of Insurance is licensed in Vermont on the Department of Financial Regulations website by clicking [here].

NOTE: Changes to insurance limits approved by the Director of Risk Management shall be documented in Attachment D, referencing the Attachment C Insurance section, to which the changes apply.

NOTE: Under no circumstances may the actual Attachment C document itself, be modified. When changes or modifications are necessary, Agencies shall use Attachment D.



NOTE: In the case of out-of-state Vendors, the Vendor's Workers' Compensation insurance carrier must be licensed to write Workers' Compensation for all work that will be conducted within Vermont.

7. Intellectual Property Ownership

3 V.S.A. §346 allows the State to grant permission to Contractors the right to use or own intellectual property developed for the State, for the Contractor's commercial purposes. Refer to the IT Guideline for additional information.

8. Confidential Information

When drafting an RFP or Contract that contemplates Contractor goods or services that will involve using, accessing, storing, processing and/or generating Confidential Information, Agencies will have the following additional considerations, such as: how the data will be used by the Contractor; security of the data; protection for Confidential Information; access to the data; ownership of the data; and return or destruction of data. Agencies must seek the advice of ADS Security and/or the AGO when preparing such RFPs or Contracts.

9. Change Order Process

Most changes to a Contract will require a Contract Amendment and must adhere to the Contract Amendments, Approval and Execution process required in this Bulletin (section XIII). However, construction and IT implementation service providers typically utilize a formal Change Order process in order to implement minor scope changes without undue delay in a project. An Agency may choose to include a Change Order process in its construction and IT implementation Contracts using the standard Change Order process language from an approved template maintained by OPC. Any changes to the standard Change Order process will require Secretary and AGO approval, regardless of the Contract amount. Change Orders may also be referred to as "task orders," "change requests," and the like. In all instances, the Change Order process must include:

- Inclusion of the original Contract number and a sequential Change Order number, and describe which parts of the Contract are changed and which parts are added;
- Inclusion of the Contractor certifications required under Section XIII.A.1. d of this Bulletin;
- State approval of all Change Orders, as per the applicable template;
- Execution by both the State and the Contractor; and

All Change Orders executed during the Contract term shall be consolidated into executable Contract Amendments any such time as an amendment would otherwise be required, pursuant to the Contract Amendments, Approval and Execution process required in this Bulletin (section XIII). The executable Amendment will then be routed for the applicable Contract Amendment approvals as required by this Bulletin.

B. Obtaining a VISION Contract Number

Regardless of dollar amount, Agencies must enter all Contracts, including Commodity Contracts into the VISION system to obtain a Contract number, record and track the Contract (see VISION Procedure #3 – Purchase Order Procedure). In addition, 3 V.S.A. § 344 (a) requires: The Secretary of Administration shall maintain a database with information about Contracts for Services, including approved Privatization Contracts and approved Personal Services Contracts; this database is maintained in the VISION system.

Each VISION Contract record shall include a representative "long description" accurately describing the Contract subject matter; descriptions such as "Personal Services" or the name of the issuing Agency are not acceptable. For all Contracts of $10,000 or greater (or for lesser amounts if required by your Agency procedures) Form AA-14 (Contract Summary and Certification Form) must be completed. It is the responsibility of the Agency to obtain any required signatures on Form AA-14 before approving the contract in the VISION finance system.

Prior to entering the Contract into the VISION system, Agencies must verify all existing Vendor information is the VISION system is correct and a current (within 6 months) Form W-9 is on file. If the form W-9 is out of date and/or a new Vendor record must be established, refer to the VISION Vendor Request Form, Form W-9 and Vendor FAQs.

[END SECTION IX]

X. CONTRACT ROUTING AND APPROVALS

A. Contract Package and Routing

1. Contract Package

A Contract or Contract Amendment requiring one or more prior approvals beyond that of the Appointing Authority shall be circulated with the relevant supporting documentation required herein ("Contract Package") to enable timely and accurate consideration of the requested approval(s). Only one Contract package shall be circulated for approval.

Contract Packages may be circulated electronically, but only in accordance with a ADS-approved electronic signature system. However, Agencies wishing to begin electronic submission to F&M after July 1, 2016, must first receive the permission of the Commission of Finance and Management, or designee. Sending separate copies to the prior-approval parties or circulating electronically to all prior approval parties at the same time is not acceptable. All approvals required must be obtained sequentially, in the order shown on Form AA-14.

The Department of Finance and Management acts as the clearinghouse for Contract packages requiring approval by the Secretary that include a pre-approved Sole Source request and/or one-time waiver request. In such cases, F&M must receive the Contract Package, with all prior approval signatures necessary, at least two weeks before the planned execution date. If less time is available, a letter of explanation should be attached. However, for Contracts taking effect on July 1, Contracts should be submitted no later than June 1. F&M will forward the Contract package and its own recommendation to the Secretary for final approval. If approved, the Secretary will return the package to F&M where a copy of the signed Form AA-14 will be retained; the remaining documents will be returned to the Agency.

2. Content and Order of Package Documents

To expedite the review and approval process, any request for approval of a Contract or Contract Amendment must consist of the following documentation, and the Contract Package, whether circulated in hard copy or via a ADS-approved electronic signature system, must be assembled in the following order:

a. Form AA-14;
b. Internal review or routing document, if used by the requesting Agency (for example, BGS issues a Request for Review (RFR) document provides a quick summary of the contract, term, amount, and signatures);
c. ADS Review Verification Sheet (if applicable) (see IT Guideline for additional information);
d. Cover memo or other document summarizing and/or justifying the requested Contract or Contract Amendment (for example, as applicable and appropriate, this document may be a Recommendation for Award, Sole Source Request, One-Time Waiver, or a Note to File);
e. Proposed Contract or Contract Amendment, including all Attachments (in alpha-numeric order);
f. For any Contract Amendment, include the original Contract, all prior Amendments, and the corresponding AA-14s in appropriate order.

3. Document Naming Convention for ADS-approved electronic signature system:

Agencies circulating Contract Packages electronically for review and approvals should consider utilizing a standard naming convention, for example:

- Standard Contract Package (requiring signature on AA-14 only):
  "CONTRACT # AND AMEND# (IF APPLICABLE) VENDOR NAME AA-14 SIGN"
- If Contract Package includes Sole Source Request (requiring signature on AA-14 and Sole Source Memo) add "and Sole Source" to end of Standard Contract Package title:
  "CONTRACT # VENDOR NAME AA-14 AND SOLE SOURCE SIGN"
- If Contract Package includes One-Time Waiver Request (requiring signature on AA-14 and Waiver Memo), add "and Waiver for XXX" to end of Standard Contract Package title: "CONTRACT *# AND AMEND# (IF APPLICABLE) VENDOR NAME AA14 and Waiver for XXXX SIGN"*
- For a One-Time Waiver made prior to RFP or Contract: "WAIVER *for XXXX Sign"*
- For Expedited Requests, begin title with the word "Expedite". ONLY Contracts, Amendments, Sole Source requests and waivers that have urgency may be named using "Expedite" as the first word in the title. For example, a Standard Contract Package would be titled as follows:
  "EXPEDITE CONTRACT # AND AMEND (IF APPLICABLE) VENDOR NAME AA14 SIGN"

B. Approvals - Required Prior Approvals

> ***NOTE: The State shall not execute a Contract requiring prior approvals until all such required approvals have been obtained.***

An Agency may be required to obtain prior approval of a Contract from the Secretary, the Office of the Attorney General (AGO) (which includes in-house assistant attorney general), Chief Information Officer (CIO), Chief Marketing Officer (CMO), or Commissioner of Human Resources.

If documentation other than the Standard State documentation is used, Appointing Authorities should consult with Agency general counselor the AGO to confirm contract terms, particularly those in "small print" Vendor documents, are consistent with State law and policy. In the case of Contracts in an amount less than $25,000 ($0 - $24,999) which may pose substantial risk to the State, Agency general counsel or the AGO should be consulted to determine if modifications to Contractor forms are required.

1. Attorney General

The Attorney General, or his/her designee, must give prior approval as follows:

a. A Contract for Service valued at $25,000 or more must be certified by the AGO, as detailed in section V of this Bulletin and 3 V.S.A. §342.

b. A Contract for Service valued at $25,000 or more must be reviewed and approved "As to Form" to ensure that the agreement: (a) complies with all applicable statutory requirements and State policy; (b) generally could be interpreted to be legal, valid, binding and enforceable; and (c) appropriately protects the interests of the State.

c. Regardless of dollar amount, a Contract for Service must be reviewed and approved "As to Form" in any of the following circumstances:
   - Vendor-required forms (for example, "small print" terms and conditions);
   - Privatization Contracts;
   - Contracts including a Change Order process (a.k.a. task orders, change requests, see section IX.A.8);
   - Financial Transaction Contracts;
   - Zero-Dollar contracts.

d. Agreements to Receive or Access Confidential Information described in Section VI.D

e. Contracts for the retention of legal services must be approved by the AGO pursuant to the process set forth in AoA Bulletin 17.10.

Upon request, the AGO will review contracts "As to Form" where such approval is not otherwise required, as above. Reviewing "As to Form" can help ensure project scope, project roles and responsibilities of the parties and payment provisions are clear and enforceable. This review "As to Form" is highly recommended for complex Contracts.

The AGO may decline to approve Contracts "As to Form" when a Contract is not consistent with State law and policy or discretionary choices made by the Agency pose risk concerns unacceptable to the AGO or the Director of Risk Management. Should the AGO decline to approve a contract "As to Form," the Agency may still request approval to enter into the Contract from the Secretary, in accordance with section VIII.D.2.

2. Secretary of Administration

The Secretary, or his/her designee, must give prior approval to:

a. Contracts with maximum amounts over $500,000;
b. Sole Source Contracts greater than $10,000;
c. Privatization Contracts;
d. Contracts which include a Change Order process (a.k.a. task orders, change requests, see section IX.A.8);
e. Financial Transaction contracts;
f. Agreements to Receive or Access Confidential Information described in Section VI.D;
g. Zero-Dollar contracts;
h. Waiver requests other than Sole Source;
i. All Contracts which the AGO has declined to approve "As to Form".
j. All Contracts with Internet service providers.

3. Commissioner of Human Resources

a. Privatization Contracts

Special and stringent requirements apply to Privatization Contracts. Any Contract that would result in the reduction in force of at least one permanent, classified State employee, or the elimination

of a vacant position of an employee covered by a collective bargaining agreement is likely to fall within the definition of "Privatization Contract" (see 3 V.S.A. § 341 for complete definition). No Agency may enter into a Privatization Contract unless it has first notified the Commissioner of Human Resources and subsequently worked with the DHR to follow the procedure specified in 3 V.S.A. § 343. The Agency shall be required to notify the Vermont State Employees Association (VSEA) of its intent to enter into a Privatization Contract 35 days prior to the beginning of any open bidding process, including an informal bidding process. Additionally, the Agency must demonstrate, by use of an accounting process specified in 3 V.S.A. § 343, that the proposed Contract will result in cost savings to the State of at least 10% compared to the cost of having the service provided by classified State employees. DHR approval is required in addition to the normal approval(s) required based on the contract amount and/or waiver requested.

b. Contracts with State of Vermont Employees and/or Retirees

State Personnel Policy 5.1 (Simultaneous Employment) prohibits employees from entering into a Contract agreement or other employment which will result in concurrent payments from the State of Vermont under more than one employment category, unless approved by the Commissioner of Human Resources.

The Commissioner of Human Resources (DHR) must also review and approve any contract with a former State of Vermont employee or retiree executed within one (1) year of the employee's date of separation or official retirement date. DHR approval is required in addition to the normal approval(s) required based on the Contract amount and/or waiver requested. The Commissioner of DHR shall maintain a list of all Contracts, approved or rejected, with former State of Vermont employees.

4. State Chief Information Officer

The State Chief Information Officer (CIO), or his/her designee, must give prior approval to:

- **a.** All RFPs for Information Technology and Information Security contracts, regardless of dollar value, prior to posting;
- **b.** Agreements to Receive or Access Confidential Information described in Section VI.D:
- **c.** Contracts for cloud services (SaaS, PaaS and IaaS) regardless of dollar value (see IT Guideline for more information);
- **d.** Contracts which will involve the electronic processing, storing, or transmission of Confidential Information;
- **e.** Sole Source Contracts for Information Technology Activities and Information Security; and
- **f.** Information Technology and Information Security Contracts over $500,000.

Agencies must follow CIO/ADS standards for the management, organization and tracking of Information Technology activities. These standards may be obtained from the Agency of Digital Services (ADS) or found at http://digitalservices.vermont.gov/ .

Certain IT Activities may require an Independent Review (IR) in accordance with 3 V.S.A. § 2222(a)(9) and (10). Refer to the IT Guideline for additional information about Information Technology requirements and duties of ADS/the State CIO.

5. Marketing Service Contracts

Any Contract for Service relating to marketing with a value greater than $25,000 requires the prior approval of the Chief Marketing Officer (CMO). Vendors of marketing services must be on the CMO's list of pre-qualified Vendors. For marketing Contracts valued at $25,000 or less, Agencies must refer to and comply with applicable Statewide marketing guidelines, policies, and standards issued by the CMO and available at: http://cmo.vermont.gov/.

[END SECTION X]

XI. CONTRACT EXECUTION AND CONTRACT FILE

A. Execution

A Contract must be signed [1] by the appropriate Appointing Authority or his/her designee, consistent with AoA Bulletin 3.3, *Delegation of Authority for Signing Documents*, and a fully executed copy maintained in the Contract File. The Agency/Department Agency must provide a copy of the entire Contract, as executed, to the Contractor.

[1] Signatures may be affixed on the signature page in writing, or through a ADS authorized e-signature system. Faxed or scanned copies of hand written signatures are also valid. Counterparts: In situations where signature pages are executed separately by the parties, each signature page shall be deemed an original.

B. Contract Administration and Contract File

Once a Contract has been executed, Agencies must properly administer Contractor performance to ensure compliance with the contract terms. A successful Contract is equally dependent on post-award administration as it is on a well-written Statement of Work (SOW) and thoughtful payment terms. The process of contract administration begins with the solicitation documentation and continues through from the time of contract award until the work has been completed and accepted, any disputes or adjustments have been resolved, final payment has been made and the Contract is formally closed out.

The individual administering the Contract for the Agency (Contract Administrator) must read and become familiar with the Contract and contract requirements in order to establish a schedule of activities for ensuring compliance by both the Contractor and the Agency. Contract compliance monitoring will include:

- Ensuring that all required certificates and reports are delivered;
- Monitoring and coordinating subcontractor approval, if any;
- Monitoring Contractor performance and coordinating any State review and approvals of deliverables;
- Monitoring invoicing and payments;
- Amendment processing and administration; and
- Conducting contract closeout, including ensuring all final Contractor reporting and deliverables have been received an accepted prior to final payment.

The Contractor's performance must be measured by all performance elements and criteria established in the Contract. While the reporting, collection, monitoring and evaluation of Contractor performance data may be a collective effort by other contract stakeholders, the contract administration function should act as a repository for all performance data and act as overseer to ensure that contractual performance requirements are monitored and reported.

The Contract Administrator will need to be aware of all Agency-Contractor activities, communications and status surrounding any and all deliverables in the event of a situation affecting any area of the contractual relationship and/or status. For example, if a deliverable is late, unacceptable or there is some other dispute, the Contract Administrator may be responsible for coordinating the required communication and resolution. Therefore, the Contract Administrator should obtain copies of the relevant paper trail, as the contract file must include complete supporting data regarding such a situation.

The Contract Administrator will process any termination documentation - for breach, default, non-appropriation of funds or if the Agency terminates for convenience. When termination occurs for any reason except the end of the contract term, notices must be given to the Contractor in accordance with the contractual requirements.

An Agency must maintain an up-to-date contract file. Agencies must keep all Contracts and the required documents on file as Public Records for at least three years after the Contract's term expires. A Contract File Check List, detailing all required documentation for the official contract File, is provided in Appendix I. An official Contract file is required for all Requests for Information (RFI), Requests for Proposal (RFP) and all Contracts awarded regardless of type of bid or waiver involved. Agencies must download the Contract File Check List and use it as a tool to ensure compliance with the documentation standard for public records and audits.

C. Conflict of Interest

Employees with a conflict of interest or appearance thereof, shall not participate in, control or influence the bidding process, the awarding of Contracts, or the approval of payments against said Contracts. Department of Human Resources (DHR) Employee Policy 5.6 and the Executive Code of Ethics (Executive Order #09-11, codified as 3 V.S.A. § E03-53) set standards that shall be used as the primary guide. Additionally, every effort shall be made to avoid even the appearance of a conflict of interest in the contracting process (see Section III for definitions). Further, every Contractor shall be required to disclose in writing any actual or potential conflict of interest.

D. Statewide and Retainer Contracts

1. Statewide Contracts

To simplify the acquisition process, the OPC maintains numerous Statewide Contracts for supplies, which include materials, equipment, parts, and commodities. Unless otherwise approved in advance, **these Statewide Contracts must be used by all Executive Branch entities.** To find out if a Statewide Contract exists that meets an Agency's need, contact the Office of Purchasing and Contracting or refer to the web site at http://bgs.vermont.gov/purchasing-contracting/contract-info.

Other Agencies may create Statewide Contracts, such as Statewide Marketing Contracts, **only when authority is expressly granted by the Secretary or applicable law.**

2. Marketing Master Contracts

The Chief Marketing Officer (CMO) shall be the only named State party on, and point of initiation for, all Marketing Master Contracts. The CMO requires a process similar to the approach to IT Retainer Contracts described below when establishing Master Marketing Contracts as well as the subsequent agreements executed pursuant to them (SOWs). Agencies should access policies and services through Master Marketing Contracts including: a) Media Buying, b) Creative Services, and c) Photography here: http://cmo.vermont.gov/document/pre-qualified-marketing-vendors-list.

3. IT Retainer Contracts

OPC maintains a number of Vendors pre-qualified to allow Agencies to quickly and efficiently obtain certain IT consulting and technical services. These pre-qualified Vendors provide services in

many functional areas or categories ranging from strategy and analysis services to Information System Security and Systems Engineering. The Vendors have agreed to the Standard State Terms and Conditions.

This results in a two-step approach to procurement. The first step is qualifying a group of Vendors under a set of requirements or functional areas. The second step allows State Agencies/Departments to solicit responses from those pre-qualified Vendors for a business need defined in a Statement of Work-Request for Proposals (SOW-RFP), and come to agreement by signing a Statement of Work (SOW) Agreement. The appropriate process and all forms to be used are set forth in each "retainer" agreement for the information of both the Vendors and the Agencies. Once an Agency has elected a Vendor using this process, it should obtain a copy of the applicable Retainer Contract for purposes of the complete contract file and contract compliance monitoring.

This SOW-RFP process is not intended for projects that would result in Contracts of more than $100,000. These larger projects require the formal Request for Proposals process. The limit per Agency SOW Agreement to be entered into using the SOW-RFP process is $100,000. Limits may be waived by the Chief Information Officer. Retainer Contracts are subject to dollar limits as well, requiring that Agencies verify the Retainer Contract balance remaining before obligating additional SOW-RFP Agreements against the Retainer Contract.

Additional information and the procedures required to access these Retainer Contracts is located at: http://bgs.vermont.gov/purchasing%20and%20contracting/current%20contrats/information-technology.

E. Blanket Delegation of Authority (BDA)

OPC may delegate authority to Appointing Authorities to make certain types of purchases directly. A BDA enables Agencies to maintain the continuity of everyday operations. The purchases made under a BDA, however, are still subject to the underlying requirements of competitive bidding as stated in this Bulletin.

BDA#1 authorizes Appointing Authorities to make any single purchase up to $3,500 provided the item being purchased is not available through an existing State Contract, is not otherwise restricted by statute or Administrative Bulletin, and is not an ongoing need of the department. ***BDA #1 may not be used to purchase services, IT purchases, and print procurement (in accordance with the Print Procurement directive issued by the Secretary of Administration dated February 13, 2012). All IT purchases shall be made under an existing Statewide Contract, IT Retainer Contract or in accordance with the IT Guidelines.***

For items needed on an ongoing basis, Agencies are expected to work with the OPC to establish a Contract. Specific authority covering certain classes of items for example, fresh produce purchased from local farmers at market prices can be requested through the OPC. All BDAs, including BDA#1, are subject to the ongoing approval of the OPC and can be revoked or modified at any time. All purchases made under a BDA may be subject to audit to determine compliance with this Bulletin and with the applicable BDA.

If the needed item(s) are not available under an existing Contract and is are not covered by an existing BDA, the Agency must prepare a requisition through the VISION system in accordance with the VISION Requisitions Manual and have the requisition budget checked for sufficient funding by the VISION system.

[END SECTION XI]

XII. SUBCONTRACTS

The Contractor may not assign, subcontract or sub-grant the performance of a Contract or any portion thereof to any other subcontractor without the prior written approval of the State. If subcontracting is approved by the State, the Contractor remains responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under the Contract. When a contract involves subcontracting (sub-agreement), the State should encourage the Contractor to follow a fair and open award process and create clear and thorough subcontracts to enable the Contractor to properly monitor the performance and compliance of the subcontractor(s). Contractors shall include the following provisions of Attachment C in Contractor's subcontracts for work that is to be performed solely for the State of Vermont or performed in the State of Vermont: (i) Fair Employment Practices and Americans with Disabilities Act, (ii) False Claims Act, (iii) Whistleblower Protections, (iv) Taxes Due the State, (v) Child Support, (vi) No Gifts or Gratuities, (vii) Certification Regarding Debarment, (viii) Certification Regarding Use of State Funds, (ix) State Facilities and (x) Location of State Data.

Standard State terms and conditions (Attachment C, "Sub-Agreements") clearly require prior notice to and the written approval of the State before a Contractor may assign or subcontract the performance of any Contract, in whole or in part.

XIII. CONTRACT AMENDMENTS, APPROVAL AND EXECUTION

One purpose of this Bulletin is to minimize Contract Amendments, especially as they relate to significant unanticipated changes in the Statement of Work, contract duration and/or the contract maximum amount. It is generally desirable to avoid Contract Amendments because they may diminish the advantages of the competitive bidding process. Extensive Contract Amendments may indicate an Agency did not define and develop a thorough Statement of Work to be performed.

Agreements such as Letters or Memoranda of Understanding (MOU), designed to amend a Contract are unacceptable.

A. Contract Amendments:

1. Amendment Requirements:

a. Contract Amendments shall be required for any change that alters the essential terms of the original Contract, including but not limited to the following examples:

- a change to the Contract that expands or decreases the Statement of Work and/or Deliverables;
- a change to the Contract that expands or decreases the payment amount beyond what is defined in the original Contract;
- a change to the payment provisions beyond those defined in the original Contract;
- a change to extend the contract duration beyond the original duration defined in the original Contract; and,
- any other change to an Attachment, for which the Contractor is to be held accountable or which would increase risks to the State.

b. All Contract Amendments must include the original contract number and a sequential Amendment number. An Amendment should describe, with specific reference to the applicable sections of the Contract, what is being added, deleted or otherwise modified. A new Form AA-14 must show the original contract number and the Amendment number.

c. When issuing a Contract Amendment, Agencies/Departments shall ensure that the Contract is updated to include the current version of Attachment C in effect at the time of the Amendment.

d. All Contract Amendments and Change Orders must include the following certifications:

i. **Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this Contract Amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

ii. **Certification Regarding Suspension or Debarment:**

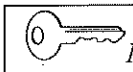
Contractor certifies under the pains and penalties of perjury, as of the date this Contract Amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by Federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date that this Contract Amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing-contracting/debarment.

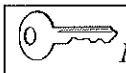
iii. **Child Support** (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs):

Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this Amendment.

e. All Contract Amendments and Change Orders to a Contract originally procured as a Sole Source must include the mandatory certification language set forth under Section VIII(D)(1)(d) of this Bulletin.



NOTE: The issuance of a revised Attachment C does not necessitate a Contract Amendment, in and of itself. However, Agencies shall include the most current Attachment C when issuing an Amendment to an existing executed Contract, replacing the Attachment C in effect at the time of the original contract execution.



NOTE: Agencies must not use multiple Contracts to procure goods and/or services which can reasonably be procured through one Contract, nor use the Contract Amendment process to avoid the requirements in this Bulletin, relating to competitive solicitation and approvals.

NOTE: Contract extension, renewal, or increases should be contingent upon prior satisfactory contractor performance, as determined by the Agency's evaluation process.

B. Amendment Approval and Execution:

1. Contract Amendment Package:

For Amendments requiring approval by the AGO, the Secretary and, in certain cases, the Chief Information Officer, a complete "Contract Amendment Package" (Package) will be sent to the Department of Finance and Management for handling. The "package" must include:

- a copy of the original executed Contract, including all Attachments and the initial Form AA-14;
- a copy of all previously executed Amendments, including all related Attachments and Forms AA-14; and
- the current proposed Amendment, including all Attachments and the new Form AA-14.

2. Appointing Authority Approval Required:

The Appointing Authority must approve all Contract Amendments.

3. Attorney General's Office and Secretary of Administration Approvals Required:

In addition to the approval of the Appointing Authority, approval by the **AGO and the Secretary** prior to execution of an Amendment is required in any of the following circumstances:

a) for any Amendment to a Contract originally procured as a Sole Source, except that prior approvals of the AGO and the Secretary shall not be required where the amendment is only to extend duration and increase the maximum amount as expressly contemplated under the terms of the original Contract, and the maximum amount of the Contract remains under $100,000 (with no change to Statement of Work or other Contract terms); or

b) any Amendment to a competitively sourced Contract originally procured using a simplified bid or RFP, if the cumulative effect of the Amendment and all prior Amendments increases the Contract price by 25% or more, except that prior approvals of the AGO and the Secretary shall not be required where the Amendment is only to extend duration and increase the maximum amount as expressly contemplated under the terms of the original Contract (with no change to scope of work or other Contract terms).

4. Chief Information Officer (CIO) Approval Required:

The CIO's approval is required for any and all Contract Amendments concerning a Contract for an Information Technology Activity and Information Security, as follows:

a. All Contracts originally for cloud services (SaaS, PaaS and IaaS) regardless of dollar value (refer to the IT Guideline for more information);

b. All Information Technology and Information Security Contracts which originally involved the processing, storing, or transmission of information protected by State or Federal law, including protected health information, personally identifiable information, Federal tax information and education information;
c. The original Contract was less than $500,000, plus the cumulative effect of all Amendments increases the Contract price above $500,000; or
d. The original contract was $500,000 or more, and the cumulative effect of all Amendments has increased the contract price by 25% or more.

C. Execution of Amendments:

Only an Appointing Authority may execute a Contract Amendment. Prior to executing an Amendment, it is the **responsibility of the Appointing Authority to ensure** the Amendment:

- is warranted;
- has obtained all required prior approvals; *and*
- is not being employed to significantly expand and/or change the Statement of Work, thereby jeopardizing the integrity of the competitive process.

D. Amendment Number and VISION Record:

As with the original Contract, each Contract Amendment must have a sequential Amendment number appended to the original VISION Contract number. All Amendments which change the duration, end date or maximum amount must be entered into the VISION system to update the existing Contract record (see VISION Procedure #3 – Purchase Order Procedure). Maintaining the correct Contract information for payment and reporting purposes is also required by 3 V.S.A. § 344 (a).

XIV. CONTRACTOR NAME CHANGE OR OTHER CHANGE IN CIRCUMSTANCES

If a Contractor's name should change during the term of a contract, Agencies should consult with counsel or the Office of the Attorney General about whether and how to properly document the change in the contract. In certain circumstances, Finance and Management will require a new Contract number in VISION with a revised Contract amount that appropriately accounts for any amounts already paid under the Contract.

There may further be circumstances in which there is such a change in the Contractor's identity, organization or capital structure, such as may occur with a merger or acquisition involving the Contractor, or other reason why it may be appropriate to agree to a novation of a Contract. Agencies should obtain specific advice and appropriate forms from counsel or the Attorney General's Office when considering this approach.

Note that Standard State Contracting forms do not allow assignment of a Contract by a Contractor without the State's written agreement. Agencies should obtain specific advice from counsel or the Attorney General's Office when a Contractor attempts to make an assignment or requests the State's agreement to do so.

[END SECTION XII - XIV]

XV. ACCOUNTING FOR PAYMENTS TO CONTRACTORS

All contractual payments shall be made through and tracked in the VISION System, in accordance with VISION Procedure #3 – Purchase Order Procedure. Contracts for Service will be coded to the appropriate expenditure account, per the Chart of Accounts, and will no longer default to #507XXX series of accounts. Only those Contract for Service which are definitively categorized as Personal Service or Privatization Contracts, as detailed in Section IV.B and IV.D, respectively, of this Bulletin will be coded to the #507XXX series of Third Party Personal Service accounts.

In the case of Financial Transaction contracts, including certain "Zero-Dollar" Contracts (see section III Definition) and regardless of whether the State receives the Gross or Net amount, accounting for the transaction must be done in accordance with Generally Accepted Accounting Principles (GAAP).

XVI. COMPLIANCE REVIEWS

In order to promote compliance with the provisions of this Bulletin, the Department of Finance and Management, the Office of Purchasing and Contracting and the Chief Performance Officer may conduct management reviews relative to this Bulletin, as deemed necessary.

XVII. FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

For some contracts funded through Federal awards, the requirements of the Federal Funding Accountability and Transparency Act (FFATA) may apply. Contracting Agencies are responsible for determining if a Contract meets the requirements of FFATA, including: Contractors have a valid DUNS number; are active Federal System for Awards (SAM) registrants; and reporting of all sub-awards (Contracts) in the FFATA Sub-award Reporting System (FSRS). For additional information about these requirements, refer to Finance and Management Policy No. 8 ~ Federal Funds Accountability and Transparency Act Compliance and the federal Uniform Guidance (2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

XVIII. PUBLIC RECORDS REQUESTS

Agencies/Departments should work closely with the AGO, embedded AAG or Agency counsel on Public Records requests involving contracts and bid documents. Contracts and all documents sent to the State in response to an RFP/RFI are public records which are exempt from disclosure to the public until a Contract is awarded and fully executed. Once the Contract has been fully executed, or the State has decided not to execute a Contract and will not pursue a new or related RFP/RFI process, all documents associated with the bid, including all Vendor proposals and evaluation notes, are then considered available for review by the public and subject to disclosure in accordance with the State's Access to Public Records Law, 1 V.S.A. § 315, et seq..

If an Agency receives a Public Records request and the response to the request includes materials marked or identified by the bidder as proprietary and confidential according to 1 V.S.A. Chapter 5, the Agency shall immediately contact the AGO, embedded AAG or Agency counsel.

XIX. PUBLIC ENDORSEMENTS

Writing a recommendation or giving a recommendation to any Vendor or to any person for their general use, is prohibited. The State cannot give the appearance of "endorsing" a person, product, or company. If one of the bidders produces a written recommendation from the State, it would appear as if the entire process of providing for an "open and fair" bidding process is suspect. It could be interpreted that the State had already "recommended" or endorsed a particular Vendor. Even the appearance of a pre-determined "recommendation" is strictly prohibited. An Agency may respond to a specific inquiry about a specific Vendor or project, but all responses shall be limited to factual statements.

When issuing an RFP, basing an award of a Contract on prior work history and experience is only acceptable if the selection criteria specified prior history and experience.

A. **Selection**. Basing an award on prior work history means that the State will take into consideration the Vendor's prior work for / with the State - good or bad. It also means that the State will weigh work history for all Vendors. For example, if 2 of 3 bidders worked for the State previously and performed well, it is reasonable to assume both would see a positive impact of their work history on their overall scoring under the selection criteria. Every Vendor must have an equal opportunity to win the award based on the selection criteria.

B. **Vendor References.** A Vendor should list prior State work experience and non-State work experience in their RFP response. As part of the RFP review process, both the State and non-State entities listed must be contacted to verify whether the prior work experience was or was not satisfactory. When contact with another unit of State occurs in this fashion, it is considered reference verification and not a "recommendation" or endorsement.

[END SECTIONS XV - XIX]

XX. APPENDICES

Appendix I – Standard State Contract Templates, Forms and Other Links

a. **Standard State Contract Templates**

   i. ***Standard Contract for Service Template***

   ii. ***Information Technology (IT) Contract Template***

   iii. ***Short-Form Contract for Service Template w/Term & Conditions***
   [restricted use to some Contracts under $25,000 – see section V.B.1.]

b. **Contract Amendment Template**

c. **Form AA-14 – Contract Summary and Certification Form**

d. **Contract File Check List**

e. **Bulletin 3.5 Contracting Waiver Plan form**

f. **IRS Publication 15 -A**
[Note: Refer to §2 for IRS rules determining Contractor vs. Employee.]

Appendix II: Attachment A – Statement of Work Guidelines

The Statement of Work (SOW) is the area in a Contract where the work to be performed is described. The SOW will contain reference to any milestones, reports, deliverables, and services expected to be provided by the Contractor, as well as outline any obligations of the State. The SOW should also contain a timeline for all deliverables.

The problem most often seen with SOWs is a lack of specificity. A well-written SOW is a clearly descriptive scope which identifies the responsibilities of both parties and avoids any ambiguity.

A well-written SOW consists of a highly tailored series of carefully worded statements that answer the following questions:

- What work is to be done?
- What are the deliverables?
- Who is going to do the work?
- When is the work going to be done?
- How will the work be performed?
- How can you tell when the work is completed?
- How will you measure the performance of the work: How Much Did We Do? How Well Did We Do It? Is Anyone Better Off?

A Statement of Work should include the following components:

1. **Need Statement** - Succinctly describe the State need that the work of this Contractor will address.

2. **Goals of the Agreement** - At the beginning of this section, complete the following sentence (please be succinct): The goal of this project is to... Complete the sentence with a brief description of the goal(s) and how the goal(s) shall be met. Goals can be technical, economic or social. Please be brief, two to three sentences maximum.

3. **Objective of the Agreement/Deliverables** - Complete this section with the affirmative obligations of the contractor, the objectives of the contract/project or goals to be achieved and the deliverables. Objectives and goals should be measurable.

   > **X Poor Example:** Task: Assess class needs for public health awareness.
   > Deliverable: Write curriculum to address needs.

   The problem with the above example is that nothing is specified. The task should be measurable, and the deliverable must be quantifiable.

✓ **Good Example:** Task: Survey 4 classes of 20 students in asthma awareness. Each class will answer a 25-question survey that assesses their general knowledge of asthma issues as they relate to public health. One reviewer should take up to 1 hour with each class to take the survey and another 2 hours per class to assess the data.

Deliverable: A 10 - hour curriculum for graduate student classes of up to 20 students that addresses issues of deficiencies in public health awareness in asthma prevention and care.

By reading the tasks and deliverables, the associated costs should be easily constructed, aiding in the construction of a detailed Attachment B, Payment Provisions. More importantly, in reviewing the deliverables, there should be no question about what is expected of the performing party. A SOW may contain many deliverables, but each should be broken down into tasks and products to specify what is expected.

4. **Administration** - If there are meetings, calls, conferences, or other "soft" deliverables, they should be outlined in the administration portion of the SOW. Any requirement that is not an end product of a specific task, but is required of the performing party, needs to be described in the administration section of the SOW.

X **Poor Example:** The Contractor will be required to give periodic reports of progress during the soybean season with more frequent reports during the height of the season.

The problem with the above example is it does not specify what needs to be in the reports, what "periodic" or "more frequent" means, and when the "height of the season" is.

✓ **Good Example:** The Contractor *shall* be required to give weekly reports consisting of: wind pattern analysis, fungi spore distribution, and potential risk areas. During the height of the season, May 15 - July 15, the Contractor may be required to give twice - weekly reports.

5. **Timeline** - This section lays out all dates for the project tasks and deliverables. Also included are the dates for the administration portion of the SOW.

6. **Key Elements** - Between the Needs Statement, Goals of the Agreement, Objectives/Deliverables, Administration, and Timeline components of the SOW, there should be no ambiguity as to what is expected of the performing party. Together, these elements should paint a thorough picture of what is expected, when, and in what form, while noting any special requirements.

Appendix III: Attachment B Payment Provision Guidelines

The main body of the Standard State Contract only states the maximum amount to be paid. Attachment B describes how and when payments will be made. Although the Payment Provisions (Attachment B) need not be long in the case of simple contracts, a well-written Attachment B is vital to eliminating payment problems during the contract term.

The language below may be used as the standard opening paragraph for Attachment B:

> *"The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this Agreement, item 3. State of Vermont payment terms are Net 30 days from date of invoice; payments against this contract shall comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment. The following provisions specifying payments are as follows:"*

The following requirements and/or areas to consider may assist Agencies/Departments in developing well-written payment terms:

1. **PRICING: What is the price based on and does it relate to Attachment A?**
   - Units of work measures, such as hourly rates, hourly rates by specified position(s) or equipment;
   - Specific and measurable deliverables, tasks or benchmarks;
   - Progress payments based on days/weeks/months;
   - Achievement of outcomes and/or performance measures toward the final result, as outlined in Statement of Work-Attachment A;
   - Quality standards;
   - Formal acceptance process for deliverables;
   - Additional items included in the price, such as fuel surcharges, environmental fees, etc.;
   - Retainage provisions.

2. **INVOICE SUBMISSION, APPROVAL AND ACCEPTANCE: What is the invoice and payment process?**
   - Detailed invoices are required, per 32 V.S.A. §463. A detailed invoice must include the following details;
     - The name and address of the Contractor (letterhead or signed by Contractor);
     - Specific language itemizing the deliverables, units of measure, steps achieved, or progress made;
     - Dates of service or specific dates worked;
     - The Contract number and the name of the project;
     - Delivery tickets (proof of purchases), receipts or other documents to be attachments to substantiate the invoice;
   - Other invoice review and approval considerations may include:
     - To whom and where the Contractor remits the invoice for pre-payment review and approval;
     - The invoicing schedule, preferably on a monthly basis.
     - How will you know when the work being billed is acceptable – who decides?

- Who is(are) authorized approvers for the invoice?
- Address the process for invoices not approved due to: unacceptable work; missing a deadline; incomplete work; etc.
- Address the process for handling and resolving payment disputes.
- Address any funding contingencies upon which this contract is based that could affect payment to the Vendor (i.e., Federal Grant Awards, Legislative Appropriation, etc.).

3. **CONTRACTOR PAYMENTS: What can the Contractor expect?**
   - Standard State payment policy is Net 30 days, from date of error free invoice receipt;
   - The preferred method of payment is by ACH (**A**utomated **C**learing **H**ouse is a secure payment transfer system that connects all U.S. financial institutions. The *ACH* network acts as the central clearing facility for all Electronic Fund Transfer (EFT) transactions that occur nationwide.);
   - To provide a current IRS Form W-9, signed within the last 6 months.
   - Retainage provisions.

   - **PAYMENT QUESTIONS: Whom should the contractor communicate with if they have** a question about their payment or method of payment (check, ACH Transfer, etc.)? In addition, the State Treasurer's Office maintains a Vendor Portal on which Vendors may access any payment made electronically, by ACH or wire: http://www.vermonttreasurer.gov/content/accounting/vendor-login.

Appendix IV: Attachment D – Examples of Common Additional Term & Conditions

Many contracts can be fully described using the Contract and standard Attachments A, B and C. In some cases, however, agencies will want to add additional provisions tailored to a specific need or their Contracting Waiver Plan, not available in the Standard Contract and Attachments.

In addition, when contracting for professional services, agencies will be required (absent an appropriate waiver) to include a professional liability insurance provision. Attachment D of the Contract "Approved Modifications to Attachment C" should be used for these modifications, as necessary. Consult with the AGO or the Director of Risk Management to ensure you are selecting the correct language.

Below are examples of the more common modifications, including explanatory guidance where necessary.

Owner's protective liability insurance: The Contractor shall carry liability insurance protecting the State and the Contractor from all claims because of bodily injury or death and property damage, arising out of the work performed under the Contract. The liability insurance shall be in an amount not less than $1,000,000 and a Certificate of Insurance shall be furnished to the State before commencement of work.

> **Guidance:** *Owners Protective Liability Insurance should be utilized when a Contractor's business involves work at multiple job sites (not necessarily all for the State) and it is unclear whether the Contractor would have adequate insurance coverage in the event of multiple occurrences at different sites. For example, Contracts with large construction companies should include such a clause.*

Professional liability insurance: Before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this Contract, with minimum coverage of $_____ per claim.

> **Guidance:** Licensed *Professionals with whom the State contracts, such as lawyers, architects, engineers, health care providers, etc. must be required to maintain professional liability insurance in sufficient amounts to protect the State's interest from the consequences of negligence. It is important to note that "professional liability" is a generic category of coverage including types such as: Physician's medical malpractice; architect's errors & omissions; etc. The Director of Risk Management will determine the minimum amount appropriate for different classes of professionals.*

Availability of federal funds: This contract is funded in whole or in part by Federal funds. In the event the Federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract immediately, and the State shall have no obligation to pay Contractor from State revenues.

> **Guidance:** *Use this clause when the State Agency is not willing or able to compensate for the loss of Federal funds on short notice. Agency fiscal officers should closely monitor funding availability and performance under these Contracts, as the State may remain liable for expenditures made in good faith by the Contractor prior to notice of cancellation.*

***Compliance with other laws*:** The Contractor agrees to comply with the requirements of [*list specific applicable Federal or state statutory or regulatory provisions*], and agrees further to include a similar provision in any and all subcontracts.

> **Guidance:** *Use this clause to refer to any statutory or regulatory provisions that must by law, grant condition or otherwise, be included in the wording of the Contract. This may include in particular cases the provisions of the Federal Rehabilitation Act of 1973 (Sec. 504), as amended; the Age Discrimination Act of 1975; and the Civil Rights Act of 1964.*

Confidentiality: Sometimes agencies have legitimate needs to protect Confidential Information. The RFP can require Contractors to maintain confidentiality, although the contract ultimately should duplicate this requirement. Conversely, bidders sometimes want to know how the State will treat the bidder's proprietary information. The RFP should state whether such information will be returned, retained or destroyed by the Agency.

Contractors' liens: Contractor will discharge any and all Contractors' or mechanics' liens imposed on property of the State through the actions of subcontractors.

> ***Guidance:*** *On occasion a subcontractor may do some work to State property that could be construed by the subcontractor to give rise to a lien against the property. While artisans' (mechanics') liens cannot be enforced against State property (See 12 V.S.A. § 5601(a)), it is nevertheless best practice to require the Contractor to correct the matter and thereby avoid litigation.*

***Cost of materials*:** Contractor will not buy materials and resell to the State at a profit.

***Identity of workers*:** The Contractor will assign the following individuals [*list individuals*] to the services to be performed under the provisions of this contract, and these individuals shall be considered essential to performance. Should any of the individuals become unavailable during the period of performance, the State shall have the right to approve any proposed successors, or, at its option, to cancel the remainder of the Contract.

***Individually identifying information*:** Contractor must not use or disclose any individually identifying information that pursuant to this contract is disclosed by the State to the Contractor, created by the contractor on behalf of the State, or used by the Contractor for any purpose other than to complete the work specifications of this contract unless such use or disclosure is required by law, or when Contractor obtains permission in writing from the State to use or disclose the information and this written permission is in accordance with Federal and State law.

Information Technology Terms & Conditions: See IT Guideline for specific Attachment D terms & requirements related IT Activities.

***Legal services*:** Contractor will be providing legal services under this Contract. Contractor agrees that during the term of the Contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its Agencies or instrumentalities. After termination of this contract,

Contractor also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this Contract.

Ownership of equipment: Any equipment purchased by or furnished to the Contractor by the State under this contract is provided on a loan basis only and remains the property of the State.

Performance bond: The Contractor shall, prior to commencing work under this Contract, furnish to the State a payment and performance bond from a reputable insurance company licensed to do business in the State of Vermont, guaranteeing the satisfactory completion of the Contract by the Contractor and payment of all subcontractors, suppliers and employees.

> **Guidance:** *Performance Bonds have limited application in Contracts for Services. This clause provides protection against failure of the Contractor to perform adequately under the Contract or distribute funds to subcontractors or suppliers. Since the cost of the bond will increase the State's cost, the clause should only be used on larger contracts or where there are significant concerns about a Contractor's financial or other abilities. If a Contractor is expected to handle large sums of money as agent for the State, the term "surety bond" should be substituted for "payment and performance bond."*

Prior approval/review of releases: Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Contractor under this contract shall be approved/reviewed by the State prior to release.

> **Guidance:** *All material published in connection with activities performed under State Contract should be reviewed and approved by the appropriate official before release. When academic freedom becomes an issue, Agency review but not Agency approval may be appropriate.*

Progress reports: The Contractor shall submit progress reports to the State according to the following schedule. [*insert schedule*] Each report shall describe the status of the Contractor's performance since the preceding report and the progress expected to be made in the next successive period. Each report shall describe Contractor activities by reference to the work specifications contained in Attachment A of this contract and shall include a Statement of Work hours expended, expenses incurred, bills submitted, and payments made.

> **Guidance:** *This clause may be used either in Attachment A (Specifications of Work to be Performed) or Attachment B. It provides information for interim evaluation of the Contractor's work and assists in detecting difficulties that may lead to necessary modification or cancellation of the Contract. If payments are to be conditioned on receipt of progress reports, this should be clearly set forth in Attachment B: Payment Provisions.*

Work product ownership: Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Contractor.

Appendix V: Acronyms Used in This Bulletin

AA-14: State of Vermont Contract Summary and Certification form

ACH: Automated Clearing House

AAG: Assistant Attorney General

ADS: Agency of Digital Services (formerly Department of Innovation and Information)

AG: Attorney General

AGO: Attorney General's Office

AoA: Agency of Administration

BAFO: Best and Final Offer

BDA: Blanket Delegation of Authority

BGS: Building and General Services

CFR: Code of Federal Regulations

CIO: Chief Information Officer, Agency of Administration

CMO: Chief Marketing Officer

CPO: Chief Performance Officer

DHR: Department of Human Resources

DUNS: Data Universal Numbering System

EBB: Electronic Bulletin Board

EFT: Electronic Fund Transfer

FAQ: Frequently Asked Questions

F&M: Department of Finance and Management

FERPA: Family Education Rights and Privacy Act

FFATA: Federal Funds Accountability and Transparency Act

FICA: Federal Insurance Contributions Act

FSRS: Federal Subaward Reporting System

GAAP: Generally Accepted Accounting Principles

GSA: Federal General Services Administration

HIPAA: Health Insurance Portability and Accountability Act

IaaS: Infrastructure as a Service

IRS: Federal Internal Revenue Service

IT: Information Technology

LLC: Limited Liability Company

MOA/MOU: Memorandum of Agreement; Memorandum of Understanding

OMB: Federal (White House) Office of Management and Budget

OPC: Office of Purchasing and Contracting

PaaS: Platform as a Service

P.O.: Purchase Order

RFP/RFI/RFC/RFQ: Request for Proposal; Request for Information; Request for Comment or Request for Quote

SaaS: Software as a Service

SAM: Federal System for Awards Management

SLA: Service Level Agreement

SOA: Secretary of Administration

SOV: State of Vermont

SOW: Statement of Work

V.S.A.: Vermont Statutes Annotated

VISION: Vermont Integrated Solution for Information and Organizational Needs

Appendix VI: Bulletin 3.5 Quick Reference Guide

[Continued on next page.]

BULLETIN 3.5 QUICK REFERENCE GUIDE

		Competitive Process			Prior Approvals Required						
		Standard Bid	Simplified Bid	Pre-Qualified Vendors	Supervisor[1] (Appointing Authority)	Attorney General	Finance & Management	Secretary of Admin. (SOA)	CIO	CMO	Comm DHR
Competitive Process, Waivers & Approvals	**1. Original Contracts Awarded - by Competitive Process**										
	$1 to $24,999.99 – Short-Form Contract and Short-Form Attachment C **may** be used, for one-time, annual services, except for life safety, hazardous materials, transport of persons and data usage/sharing. However, a current insurance certificate must be on file.				✓						
	$25,000 but less than $500,000	✓	✓		✓	✓					
	$500,000 or greater	✓			✓	✓		✓			
	Zero-Dollar Contracts	✓			✓	✓		✓			
	2. Original Contract Awarded – No Competitive Process ("Sole Source")										
	Sole Source Award $10,000 or less	Direct Award, non-competitive process			✓						
	Sole Source Award greater than $10,000	Direct Award, non-competitive process			✓		✓	✓			
	If applicable, IT Sole Source needs CIO approval prior to SOA	Direct Award, non-competitive process			✓				✓		
	3. Original Contract Waiver Requests – Contracting Plans										
	Waiver Requests Other than Sole Source (refer to dollar thresholds)	✓	✓	✓	✓		✓	✓			
Special Contract Type Added Approvals	**4. Contract Types Requiring Additional Approvals (in addition to Prior Approvals listed above #1, 2 and 3)**										
	Information Technology & Security RFP								✓		
	Information Technology & Security Contracts over $500,000								✓		
	IT & Security Contracts (electronic processing, storing, or transmission of confidential information)								✓		
	IT & Security Contracts for Cloud Services								✓		
	Marketing Contracts									✓	
	Privatization Contracts					✓		✓			✓
	State of VT Employees & Retiree Contracts										✓
	Contracts including a Change Order Processes					✓		✓			
	Financial Transaction Contracts & Zero-Dollar					✓		✓			
	Agreements to Receive or Access Confidential Information					✓		✓	✓		

- **This guide is intended as a quick reference to monetary thresholds, primary waiver conditions, basic contract types and prior approval requirements. It is not all inclusive and is not a substitute for reading, understanding and complying with this Bulletin;**
- **Additional Agency or Departmental conditions, not included in this Bulletin, may apply.**

[1] Supervisor – a.k.a. the Appointing Authority: any secretary, commissioner, executive director, elected officer, or other exempt head of a department or agency.
[2] Monetary Thresholds are cumulative - if the original contract amount plus all amendments reaches a new threshold; the requirements for the higher threshold apply.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

Title 23 : Motor Vehicles

Chapter 015 : Powers Of Enforcement Officers

(Cite as: 23 V.S.A. § 1607)

[Section 1607 repealed effective July 1, 2020.]

§ 1607. Automated license plate recognition systems

(a) Definitions. As used in this section:

(1) "Active data" is distinct from historical data as defined in subdivision (3) of this subsection and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(2) "Automated license plate recognition system" or "ALPR system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.

(3) "Historical data" means any data collected by an ALPR system and stored on the statewide ALPR server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(4) "Law enforcement officer" means a State Police officer, municipal police officer, motor vehicle inspector, Capitol Police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Training Council as a level II or level III law enforcement officer under 20 V.S.A. § 2358.

(5) "Legitimate law enforcement purpose" applies to access to active or historical data, and means investigation, detection, analysis, or enforcement of a crime or of a commercial motor vehicle violation or a person's defense against a charge of a crime or commercial motor vehicle violation, or operation of AMBER alerts or missing or endangered person searches.

(6) "Vermont Intelligence Center analyst" means any sworn or civilian employee who through his or her employment with the Vermont Intelligence Center (VIC) has access to secure databases that support law enforcement investigations.

(b) Operation. A Vermont law enforcement officer shall be certified in ALPR operation by the Vermont Criminal Justice Training Council in order to operate an ALPR system.

(c) ALPR use and data access; confidentiality.

(1)(A) Deployment of ALPR equipment by Vermont law enforcement agencies is intended to provide access to law enforcement reports of wanted or stolen vehicles and wanted persons and to further other legitimate law enforcement purposes. Use of ALPR systems by law enforcement officers and access to active data are restricted to legitimate law enforcement purposes.

(B) Active data may be accessed by a law enforcement officer operating the ALPR system only if he or she has a legitimate law enforcement purpose for the data. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(C)(i) Requests to access active data shall be in writing and include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's Originating Agency Identifier (ORI) number. To be approved, the request must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action. The written request and the outcome of the request shall be transmitted to VIC and retained by VIC for not less than three years.

(ii) In each department operating an ALPR system, access to active data shall be limited to designated personnel who have been provided account access by the department to conduct authorized ALPR stored data queries. Access to active data shall be restricted to data collected within the past seven days.

(2)(A) A VIC analyst shall transmit historical data only to a Vermont or out-of-state law enforcement officer or person who has a legitimate law enforcement purpose for the data. A law enforcement officer or other person to whom historical data are transmitted may use such data only for a legitimate law enforcement purpose. Entry of any data onto the statewide ALPR server other than data collected by an ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(B) Requests for historical data within six months of the date of the data's creation, whether from Vermont or out-of-state law enforcement officers or other persons, shall be made in writing to a VIC analyst. The request shall include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's ORI number. To be approved, the request must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action. VIC shall retain all requests and shall record in writing the outcome of the request and any information that was provided to the requester or, if applicable, why a request was denied or not fulfilled. VIC shall retain the information described in this subdivision (c)(2)(B) for no fewer than three years.

(C) After six months from the date of its creation, VIC may only disclose historical data:

(i) pursuant to a warrant if the data are not sought in connection with a pending criminal charge; or

(ii) to the prosecution or the defense in connection with a pending criminal charge and pursuant to a court order issued upon a finding that the data are reasonably likely to be relevant to the criminal matter.

(3) Active data and historical data shall not be subject to subpoena or discovery, or be admissible in evidence, in any private civil action.

(4) Notwithstanding any contrary provisions of subdivision (2) of this subsection, in connection with commercial motor vehicle screening, inspection, and compliance activities to enforce the Federal Motor Carrier Safety Regulations, the Department of Motor Vehicles (DMV):

(A) may maintain or designate a server for the storage of historical data that is separate from the statewide server;

(B) may designate a DMV employee to carry out the same responsibilities as a VIC analyst and a supervisor as specified in subdivision (2) of this subsection; and

(C) shall have the same duties as the VIC with respect to the retention of requests for historical data.

(d) Retention.

(1) Any ALPR information gathered by a Vermont law enforcement agency shall be sent to the Department of Public Safety to be retained pursuant to the requirements of subdivision (2) of this subsection. The Department of Public Safety shall maintain the ALPR storage system for Vermont law enforcement agencies.

(2) Except as provided in this subsection and section 1608 of this title, information gathered by a law enforcement officer through use of an ALPR system shall only be retained for 18 months after the date it was obtained. When the permitted 18-month period for retention of the information has expired, the Department of Public Safety and any local law enforcement agency with custody of the information shall destroy it and cause to have destroyed any copies or backups made of the original data. Data may be retained beyond the 18-month period pursuant to a preservation request made or disclosure order issued under Section 1608 of this title or pursuant to a warrant issued under Rule 41 of the Vermont or Federal Rules of Criminal Procedure.

(e) Oversight; rulemaking.

(1) The Department of Public Safety, in consultation with the Department of Motor Vehicles, shall establish a review process to ensure that information obtained through use of ALPR systems is used only for the purposes permitted by this section. The Department of Public Safety shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on Transportation. The report shall contain the following information based on prior calendar year data:

(A) the total number of ALPR units being operated by government agencies in the State, the number of such units that are stationary, and the number of units submitting data to the statewide ALPR database;

(B) the number of ALPR readings each agency submitted, and the total number of all such readings submitted, to the statewide ALPR database;

(C) the 18-month cumulative number of ALPR readings being housed on the statewide ALPR database as of the end of the calendar year;

(D) the total number of requests made to VIC for historical data, the average age of the data requested, and the number of these requests that resulted in release of information from the statewide ALPR database;

(E) the total number of out-of-state requests to VIC for historical data, the average age of the data requested, and the number of out-of-state requests that resulted in release of information from the statewide ALPR database;

(F) the total number of alerts generated on ALPR systems operated by law enforcement officers in the State by a match between an ALPR reading and a plate number on an alert database and the number of these alerts that resulted in an enforcement action;

(G) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which active data contributed, and a summary of the nature of these investigations and enforcement actions;

(H) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which historical data contributed, and a summary of the nature of these investigations and enforcement actions; and

(I) the total annualized fixed and variable costs associated with all ALPR systems used by Vermont law enforcement agencies and an estimate of the total of such costs per unit.

(2) Before January 1, 2018, the Department of Public Safety shall adopt rules to implement this section. (Added 2013, No. 69, § 1; amended 2015, No. 169 (Adj. Sess.), § 8; 2017, No. 175 (Adj. Sess.), § 3, eff. May 25, 2018; 2013, No. 69, § 3(b), eff. July 1, 2013, 2015, No. 32, § 1; 2017, No. 175 (Adj. Sess.), §§ 1 and 3, eff. May 25, 2018.)

DOUGLAS R. HOFFER
STATE AUDITOR

STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

To: Representative Maxine Grad, Chair of the House Committee on Judiciary
Senator Dick Sears Jr., Chair of the Senate Committee on Judiciary
Representative Patrick Brennan, Chair of the House Committee on Transportation
Senator Dick Mazza, Chair of the Senate Committee on Transportation
Date: September 27, 2018
Re: Statutory Compliance of Automated License Plate Recognition Systems in Vermont
Cc: Thomas Anderson, Commissioner of the Department of Public Safety

Introduction

Automated License Plate Recognition system (ALPR) units are mounted on police vehicles, traffic lights, and street signs. The units automatically record images of license plates and enter the license plate numbers as well as GPS coordinates and other information into a database. The database can later be searched, and the information retrieved can help law enforcement locate where vehicles were at a specific time and place. Many states regulate the use of ALPR systems, mostly through access and data retention policies.[1] Such policies are generally driven by privacy concerns and vary widely. For example, New Hampshire law requires that ALPR records be deleted within three minutes of their capture, while Colorado allows records to be retained for three years.[2]

Act No. 175 of 2018 requires the State Auditor's Office (SAO) to examine requests for ALPR historical data that resulted in a release of information by the Vermont Intelligence Center (VIC) to the requester from July 1, 2016 through June 30, 2018. The objective of the examination is to determine whether requests and releases of historical ALPR data complied with the requirements of 23 V.S.A. § 1607.[3]

Highlights

- SAO reviewed all sixty-four requests for historical ALPR data that resulted in the release of information reviewed during the period specified in Act 175. Fifty-seven appeared to comply with 23 V.S.A. § 1607, while seven did not.
- Six of seven releases of information that did not comply with statute provided historical data older than six months, which requires the requester to obtain a warrant or there must be pending criminal charges.
- One request did not provide specific and articulable facts, as required by law.

1 "Automated License Plate Readers: State Statutes Regulating Their Use," National Conference of State Legislatures, available here.

2 "Automated License Plate Readers: State Statutes Regulating Their Use," National Conference of State Legislatures, available here.

3 Act 175 of 2018

Statute and VIC

Law enforcement agencies can request ALPR historical data to aid their investigations. Historical data "means any data collected by an ALPR system and stored on the statewide ALPR server..." operated by the VIC.[4] 23 V.S.A. § 1607 states that to be approved, "the request must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action." The request must include the name of the requester, the requester's law enforcement agency, and the law enforcement agency's Originating Agency Identification (ORI) number. Furthermore, as noted above, statute specifies that historical data older than six months may only be released if it is related to pending criminal charges or a warrant has been issued.[5]

According to the VIC, analysts rely on the information on the ALPR Request Form when determining whether to approve a request for historical data. Specifically, they ensure that there is a case number, the approval of the supervisor of the requesting law enforcement officer, and that the written request does not appear to be "fishing" for information. The VIC notes that "specific and articulable facts" and "reasonable grounds" are subjective standards, and each request is examined with the context provided on the form. Furthermore, VIC specified that it does not determine whether information is necessary for an investigation and does not verify the information provided by the requester.[6] [7]

Compliance with Statute

From July 1, 2016 to June 30, 2018, VIC approved 339 requests for a search of historical data made by local, state and federal law enforcement agencies, 64 of which resulted in the release of information to the requester.[8] As specified by Act 175, SAO examined the 64 that resulted in the release of historical data. SAO did not assess the accuracy of the information on the ALPR Request Forms provided by the VIC. For example, we did not verify statements made by law enforcement officers; our analysis assumes that professional law enforcement provided accurate information on the ALPR Request Forms. Further, we did not examine requests that were approved but did not result in the release of historical information.[9]

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4 23 V.S.A. § 1607

5 23 V.S.A. § 1607

6 Statute does not require that VIC determine whether information provided on the form is relevant to an investigation and does not require that the VIC verify information provided by the requester. SAO includes this information to provide relevant context about how VIC carries out its duties.

7 August 2018 discussion with VIC.

8 Specifically, the VIC approved the request for information based on information provided by a law enforcement agency with an ALPR Request Form, and found information in the ALPR database relevant to the ALPR request. In many cases, requests are approved but no relevant information is found in the database, and as a result no information is released to the requesting law enforcement agency.

9 VIC only releases historical data after approving the request and if relevant data is found in the database.

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We examined ALPR Request Forms for each element that is required by statute. Most met the requirements in 23 V.S.A. § 1607. However, requests for historical data varied widely in the level of detail provided. Some offered a narrative explaining why historical data would be useful to an investigation, while others provided very little information. For example, one case provided details about a crime that occurred at a certain location, a witness to that crime, the type of vehicle the witness described, and how the ALPR historical data might be useful to the active investigation. In contrast, another request merely stated that the information was to track a certain vehicle of "drug traffickers from [city name]." Appendix A includes further examples of the variation in level of detail provided by law enforcement on ALPR Request Forms.

Seven requests and subsequent information releases did not comply with statute. Six requests resulted in the release of historical data older than six months, which statute specifies requires a warrant or pending criminal charges.[10] The releases of historical data older than six months occurred in 2016 and 2017, and data released were up to eighteen months old. The ALPR Request Forms did not include or reference a warrant or pending criminal charges.

VIC agreed that they were not in compliance with the statute, which went into effect on July 1, 2016, and they stated that they were not in compliance until "mid-2017." Subsequently, the VIC retrained their analysts and changed their request review procedures to include a review of each ALPR by a second analyst.[11]

Of the seven requests that resulted in the release of historical data but did not comply with statute, one lacked specific and articulable facts. The request, made by a local police department, stated that the request was for a "Drug investigation," and identified a vehicle but provided no other details. This does not meet a standard of "specific and articulable facts" that would provide reasonable grounds to believe that the data are relevant to an ongoing investigation because the request simply states that there is a drug investigation but does not explain why the data would be relevant to the investigation itself.

Conclusion

Of 64 releases of historical data reviewed by SAO, 57 appeared to comply with 23 V.S.A. § 1607, while seven did not. Six of seven provided information older than six months without a warrant or a pending criminal charge, while one request provided no "specific and articulable" facts. While 11 percent of reviewed cases did not comply with statute, 89 percent met the statutory requirements.

The legislature could take a variety of actions to safeguard ALPR historical data. As mentioned, statute requires that the requester "provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material" to ongoing investigations. The legislature

10 Act 169 of 2015 amended 23 V.S.A. § 1607 to specify that no historical data older than 6 months be released without a search warrant or pending criminal charges. The relevant section of Act 169 went into effect on July 1, 2016. All reviewed requests came at least three months after the provisions in Act 169 went into effect.

11 September 5, 2018 email with VIC.

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could further specify how "specific and articulable facts" and "reasonable grounds" are defined. Such a definition might be developed in consultation with local and state law enforcement agencies to create a workable definition for law enforcement balanced against privacy concerns.

Furthermore, the legislature could require historical data requesters to attest that the information they have provided on an ALPR Request Form is accurate and truthful to the best of their knowledge. Finally, the legislature could require the VIC to annually conduct an internal audit of their ALPR system process to ensure statutory compliance and improve the procedure.

We appreciate the assistance of VIC and DPS staff during this review.

Appendix A: ALPR Request Form Details Examples

Requests for historical data varied widely in the level of detail provided. Some offered a narrative explaining why historical data would be useful to an investigation, while others provided very little information. Here we have provided six redacted examples of the information provided by law enforcement agencies on ALPR Request Forms. In addition to the information provided below, ALPR Request Forms often include specific vehicle information.

1. "Investigation into multiple ATM robberies spanning multiple counties in the State of Vermont. The suspect has been associated with VT registration: [license plate, make of vehicle] The first ATM robbery occurred [date] and the latest was on [date]."

2. "Vehicle reported to be a stolen rental car. Possibly involved in frequent trips between [City] and VT."

3. "Suspects vehicle in car theft."

4. "The following vehicle may be involved in drug trafficking from [state] to the Vermont. The intended suspect to the investigation is [name, date of birth] and the vehicle was rented from [car rental company]. The projected search of the system of VT and [state] is to verify information given from a cooperating subject that he is traveling to and from [state] frequently to traffic heroin and cocaine back to VT in this vehicle."

5. "Historical Query on individual's vehicle to see if it has been seen in Vermont over the last year or so. Individual is associated with known marijuana smugglers and may be participating in the movement of illicit drugs."

6. "[Name] is suspected of selling heroin in the [town 1] and [town 2] area. He is also possibly linked to a fatal overdose in [town 2]."

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Privacy Policy

2016

Vermont Intelligence Center

Kevin Lane
Vermont Intelligence Center
7/15/2016

Vermont Intelligence Center

Internal Operations Privacy Policy

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1.0 Statement of Purpose

The mission of the Vermont Intelligence Center is to collect, evaluate, analyze, and disseminate information and intelligence data regarding criminal activity, officer safety, and the safety of the public, while following the Fair Information Practices to ensure the rights and privacy of citizens. This policy is to promote the Vermont Intelligence Center and its users' compliance with federal, state, local, and tribal laws and assists its users in:

- Increasing public safety and improving national security.
- Minimizing the threat and risk of injury to specific individuals.
- Minimizing the threat and risk of injury to law enforcement and others responsible for public protection, safety, or health.
- Minimizing the threat and risk of damage to real or personal property.
- Protecting individual privacy, civil rights, civil liberties, and other protected interests.
- Protecting the integrity of the criminal investigator, criminal intelligence, and justice system processes and information.
- Minimizing reluctance of individuals or groups to use or cooperate with the justice system.
- Supporting the role of the justice system in society.
- Promoting governmental legitimacy and accountability.
- Making the most effective use of public resources allocated to public safety agencies.

2.0 Compliance with Laws Regarding Privacy, Civil Rights, and Civil Liberties

2.10 All Vermont Intelligence Center (VIC) personnel, participating agency personnel, personnel providing information technology services, private contractors, and other authorized users will comply with the VIC privacy policy. The policy applies to information the VIC collects, receives, maintains, archives, accesses, or discloses to VIC personnel, governmental agencies (including Information Sharing Environment [ISE] participating agencies), and participating justice and public safety agencies, as well as to private contractors and the general public.

2.20 The VIC will maintain an electronic copy of each user's signed privacy policy. Products from the VIC that include Protected Personal Identifiable Information (PII) will include a disclaimer stating the information is not to be disseminated further without the permission of the VIC.

2.30 Requested reports/products with general law enforcement data will include a disclaimer indicating that the data obtained from other agencies is the property of the contributing agencies. Prior approval from the originating agency must be obtained before any specific information about the involvement may be released.

2.40 The VIC will follow the rules established in the Vermont Incident Based Reporting System (VIBRS) User Agreement, maintained by VT Department of Public Safety-Criminal Justice Service.

2.50 VIC personnel and participating agency personnel, personnel providing information technology services, private contractors, and other authorized users shall adhere to all rights granted by the U.S. and Vermont Constitutions.

(a) Provisions of the United States Constitution, and statutory civil rights protections may also directly govern state action. These provisions include the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973; the Equal Educational Opportunities Act of 1974; the Americans with Disabilities Act; the Fair Housing Act; the Voting Rights Act of 1965; and the Civil Rights of

Institutionalized Persons Act.

(b) Federal laws, Executive Orders, Regulations, and Policies including CFR Parts 20, 22, and 23 and the Health Insurance Portability and Accountability Act (HIPAA) may affect the sharing of information, including terrorism-related information, in the Information Sharing Environment (ISE).

(c) In addition to the Vermont Constitution, the VIC and its personnel will also adhere to Title 1, Chapter 5, Subchapter 3 of the Vermont Statutes, regarding dissemination of records and Title 9, Chapter 62, Subchapter 63 regarding social security protections.

2.60 The VIC has adopted internal operating policies that are in compliance with applicable law protecting privacy, civil rights, and civil liberties including, but not limited to, those listed in section 2.50 of this policy.

3.0 Definitions

3.10 Access –Data access is the ability to obtain (through permission from owner) particular information on a computer. Web access means having a connection to the World Wide Web through an access provider or through an online service provider. Data access is usually specified as read-only and/or read/write access.

3.11 Access (with regard to the ISE) – In the context of the ISE, "access" refers to the business rules, means, and processes by and through which ISE participants obtain crime-related information, to include homeland security information, terrorism information, and law enforcement information acquired by another ISE participant.

3.12 Acquisition –The means by which an ISE participant obtains information through the exercise of its authorities. For the purpose of this definition, acquisition does not refer to the obtaining of information widely available to other ISE participants through, for example, news reports or information shared with them by another ISE participant who originally acquired the information.

3.13 Agency – The Vermont Department of Public Safety – Vermont State Police.

3.14 Authorized Organizations, Persons, and Users

(a) Authorized Organizations

(i) Law Enforcement Agencies -Federal, State, Local, and Tribal

(ii) Entities, private or governmental, who assist law enforcement agencies in the operation of the justice information system

(iii) Public agencies whose authority to access information gathered and retained by the VIC is specified in law.

(b) Authorized Persons – For the purposes of disclosing and sharing information, persons who are employees or agents of an Authorized Organization who have shown a need to know and a right to know.

(c) Authorized User – An Authorized Person who has been trained and has direct access to one or all of the systems maintained by the VIC. The user also has provided documentation appropriate to the needs of section 9.20. Authorized users outside of the VIC are primarily limited to those who have access to the

Criminal Intelligence Database only.

3.15 Center – All participating agencies within the Vermont Intelligence Center (VIC). The VIC was formerly known as the Vermont Fusion Center (VTFC) under which name this policy was originally approved and adopted. The VIC was subsequently known as the Vermont Information and Analysis Center (VTIAC), which was reflected in a prior revision to this policy.

3.16 Information – Any data about people, organizations, events, incidents, or objects, regardless of the medium in which it exists. Information received by law enforcement agencies can be categorized into the following general areas: general data, tips and leads, suspicious activity reports, criminal intelligence information, and public-open source information.

(a) General Law Enforcement Information (For purposes of the ISE) or data– Any information obtained by or of interest to a law enforcement agency or official that is both (a) related to crime or the security of our homeland and (b) relevant to a law enforcement mission, including but not limited to information pertaining to an actual or potential criminal, civil, or administrative investigation or a foreign intelligence, counterintelligence, or counterterrorism investigation; assessments of or responses to criminal threats and vulnerabilities; the existence, organization, capabilities, plans, intentions, vulnerabilities, means, methods, or activities of individuals or groups involved or suspected of involvement in criminal or unlawful conduct or assisting or associated with criminal or unlawful conduct; the existence, identification, detection, prevention, interdiction or disruption of or response to criminal acts and violations of the law; identification, apprehension, prosecution, release, detention, adjudication, supervision, or rehabilitation of accused persons or criminal offenders; and victim/witness assistance.

(b) Tips and Leads Information or Data – Uncorroborated reports or information generated from inside or outside the agency that alleges or indicates some form of possible criminal activity. Tips and leads can also be referred to as suspicious incident report (SIR) information, suspicious activity report (SAR) information, and/or field interview reports (FIRs). Tips and leads information does not include incidents that do not have an offense attached, criminal history records, or CAD data. Tips and leads information is maintained in a secure system, similar to data that rises to the level of reasonable suspicion.

i. A tip or lead can come from a variety of sources, including, but not limited to, the public, field interview reports, and anonymous or confidential sources. This information documents the presence of some suspicion, or is based on a level of suspicion that is less than "reasonable suspicion," but without further inquiry or analysis, it is unknown whether the information is accurate or useful. Tips and leads information falls between being of no use to law enforcement and being extremely valuable depending on the availability of time and resources to determine its meaning.

ii. The VIC does participate in a Tips or Leads Data Program. Information within the database will be subject to collection and retention as defined in sections 4.10 and 4.51. The information may be forwarded to law enforcement agencies if believed to be part of an active criminal investigation, or if the information needs validation prior to submission into a criminal intelligence or SAR database. Reports within the Tips and Lead Data Program as subject to purging as defined in 8.10.

(c) Suspicious Activity Report (SAR) Information – The observation and documentation of a suspicious activity. At the federal level, there are two types of SAR information: 1) SAR information that pertains to suspicious activities that would lead a reasonable person to believe what the person is

observing is reasonably indicative of preoperational planning related to terrorism or other criminal activity; and 2) Banking Secrecy Act SAR information that pertains to suspicious banking activity and is required to be completed by financial institutions. Suspicious activity report (SAR) information offers a standardized means for feeding information repositories or data analysis tools. Patterns identified during SAR information analysis may be investigated in coordination with the reporting agency and, if applicable, the VIC. SAR information is not intended to be used to track or record ongoing enforcement, intelligence, or investigatory activities, nor are they designed to support interagency calls for service.

(d) Criminal Intelligence Information or Data – Information deemed relevant to the identification of criminal activity and those engaged in such activities, or that is reasonably suspected of involvement in criminal acts. These records are maintained in a criminal intelligence system in accordance with 28 C.F.R. Part 23.

(e) Public –Open Source information – Information that is available to the public and its access is not restricted by the source. This may include but not limited to news reports, internet medium, and town records.

3.17 Law –Any local, state or federal constitution, statute, ordinance, regulation, executive order, policy or court rule, decision, or order as construed by appropriate local, state, or federal officials or agencies.

3.18 Personal Identifiable Information (PII) – Data from which a human being can be uniquely identified as defined by 9 V.S.A. § 2430(5)(a).

3.19 Protected Information –Information about United States citizens and lawful permanent residents that is subject to information privacy or other legal protections under the Constitution and/or laws of the United States. While not within the definition established by the ISE Privacy Guidelines, protection may be extended to other individuals and organizations by internal federal or Vermont agency policy or regulation.

3.20 Public – Includes:

(a) Any person, for-profit or nonprofit entity, organization, or association;

(b) Any governmental entity for which there is no existing law authorizing access to the agency's information;

(c) Media organizations;

(d) Entities that seek, receive, or disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to the nature or intent of those requesting information from the agency.

3.21 Public Record – Any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business, as defined by 1 V.S.A. § 317. Several public records are exempt from public inspection and copying. Included within this list of public records exceptions are:

a. (5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;

(vi) could reasonably be expected to endanger the life or physical safety of any individual.

b. (B) Records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.

c. 1 V.S.A. § 317(c)(5)(D): It is the intent of the General Assembly that, consistent with the manner in which courts have interpreted subdivision (A) of this subdivision (5), a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing. A record shall not be withheld in its entirety because it contains identities or information that have been redacted pursuant to this subdivision..

d. Critical Infrastructure reports and threat assessments on government and private facilities defined per 1 V.S.A. § 317(c)32.

3.22 Written or Writing – A tangible or electronic record of a communication or representation including handwriting, written or typed printing, photostat, photography, audio or video recording and e-mail.

4.0 Seeking and Retaining Information

4.10 The VIC will seek, retain, or share information that:

(a) Is based on a criminal predicate or possible threat to public safety; or

(b) Is based on reasonable predicate that an identifiable individual or organization has committed a criminal offense or is involved in planning criminal conduct or activity that presents a threat to any individual, the community, or any nation and that the information is relevant to the criminal conduct or activity; or

(c) Is relevant to the investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention of crime; or

(d) Is useful in a crime analysis or in the administration of criminal justice and public safety (including topical searches); and

(e) The source of the information is reliable and verifiable or limitations on the quality of the information are identified; and

(f) The information was collected in a fair and lawful manner.

4.11 The VIC may retain information that is based on a level of suspicion that is less than "reasonable suspicion," such as tips and leads or suspicious activity report (SAR) information, subject to the policies and procedures of the originating agency.

4.12 The VIC will not seek or retain information about individuals or organizations solely on the basis of their or their races, ethnicities, citizenship, places of origin, ages, disabilities, genders, or sexual orientations religious, political, or social views or activities, or their participation in a particular noncriminal organization or event.

4.13 The VIC shall keep record of the source of all information retained by the VIC. The source information shall include the source classification as defined in section 3.0(7) and any caveats from the source on the credibility of the information.

4.20 Labeling of Information

a) The VIC applies labels to center originated information (or ensures that the originating agency has applied labels) to indicate to the accessing authorized user that:

   i. The information is protected information as defined by the ISE Privacy Guidelines and as defined by the VIC or, to the extent expressly provided in this policy, includes other individuals or organizational entities.
   ii. The information is subject to local, state or federal law restricting access, use, or disclosure.

b) The VIC personnel will, upon receipt of information, assess the information to determine or review its nature, usability, and quality. Personnel will assign categories to the information (or ensure that the originating agency has assigned categories to the information) to reflect the assessment, such as:

   i. Whether the information consists of tips and leads data, suspicious activity reports, criminal history, intelligence information, case records, conditions of supervision, case progress, or other information.
   ii. The nature of the source as it affects veracity (for example, anonymous tip, trained interviewer or investigator, public record, private sector).
   iii. The reliability of the source (for example, reliable, usually reliable, unreliable, unknown).
   iv. The validity of the content (for example, confirmed, probable, doubtful, cannot be judged).

c) At the time a decision is made by the VIC to retain information, it will be labeled (by record, data set, or system of records), to the maximum extent feasible, pursuant to applicable limitations on access and sensitivity of disclosure to:

i. Protect confidential sources and police undercover techniques and methods.
ii. Not interfere with or compromise pending criminal investigations.
iii. Protect an individual's right of privacy or their civil rights and civil liberties.
iv. Provide legally required protections based on the individual's status as a child, sexual abuse victim, resident of a substance abuse treatment program, resident of a mental health treatment program, or resident of a domestic abuse shelter.

d) The labels assigned to existing information under 4.15(c) will be reevaluated whenever:

i. New information is added that has an impact on access limitations or the sensitivity of disclosure of the information.
ii. There is a change in the use of the information affecting access or disclosure limitations; for example, the information becomes part of court proceedings for which there are different public access laws.

e) The VIC incorporates the gathering, processing, reporting, analyzing, and sharing of terrorism-related suspicious activities and incidents (SAR process) into existing processes and systems used to manage other crime-related information and criminal intelligence, thus requiring adherence to existing policies and protocols utilized to protect the information, as well as information privacy, civil rights, and civil liberties.

f) The VIC will attach (or ensure that the originating agency has attached) to information that will be used, accessed, or disseminated, specific labels and descriptive metadata to clearly indicate any legal restrictions on information sharing based on information sensitivity or classification.

4.30 Methods of Seeking or Receiving Information

a) Information gathering and investigative techniques used by the VIC and participating authorized Agencies will comply with all applicable laws.

b) The VIC will not directly or indirectly receive, seek, accept, or retain, information from an individual or nongovernmental information provider, commercial database, regardless of whether the entity receives a fee or benefit for providing the information, if the VIC knows or has reason to believe that:

i. The individual or information provider is legally prohibited from obtaining the specific information sought or disclosing it to personnel within the VIC, except if the individual did not act as an agent of or at the direction of any bona fide law enforcement officer participating with the VIC;

ii. The individual or information provider used methods for collecting the information that participating center personnel could not legally use, unless the individual did not act as an agent of, or at the direction of any bona fide law enforcement officer participating in the VIC. In this particular case, the Director of the VIC shall seek the advice of the Department's Legal Counsel on the current prevailing state and federal case law on information obtained by a third party individual that is counter to laws of criminal procedure before any information is used;

iii. The specific information sought from the individual or information provider could not legally be collected by any participating agency within the VIC; or

iv. The VIC or any of its participating agencies has not taken steps necessary to be authorized to collect the information.

c) The VIC will use the least intrusive information gathering and investigative techniques available in the particular circumstance to gather the information that it is authorized to seek or retain pursuant to Sections 4.10.

d) The VIC will contract only with commercial database entities that provide an assurance that their methods for gathering personally identifiable information comply with applicable local, state, tribal, territorial, and federal laws, statutes, and regulations and that these methods are not based on misleading information-gathering practices.

4.40 Basic Descriptive Information

The VIC requires certain basic descriptive information to be entered and electronically associated with data (or content) for which there are special laws, rules, or policies regarding access, use, and disclosure. The types of information should then include:

a) The name of the originating department, component, and subcomponent;

b) The name of the agency's justice information system from which the information is disseminated;

c) The date the information was collected and, when feasible, the date its accuracy was last verified;

d) The title or position, and contact information for the person to who questions regarding the information should be directed.

4.50 Received Suspicious Activity Reports

Suspicious activity reports may be received by the VIC. VIC personnel are required to adhere to the following practices and procedures for the receipt, collection, assessment, storage, access, dissemination, retention, and security of tips and leads regarding suspicious activity report (SAR) information. Center personnel will:

a) Prior to allowing access to or dissemination of the information, ensure that attempts to validate or refute the information have taken place and that the information has been assessed for sensitivity and confidence by subjecting it to an evaluation or screening process to determine its credibility and value, and categorize the information as unsubstantiated or uncorroborated if attempts to validate or determine the reliability of the information have been unsuccessful. The VIC will use a standard reporting format and data collection codes for SAR information;

b) Store the information using the same method as data that rises to the level of reasonable suspicion and shall include an audit and inspection process, supporting documentation, and labeling of the data to delineate it from other information;

c) Allow access to or disseminate the information using the same (or a more restrictive) access or dissemination standard that is used for data that rises to the level of reasonable suspicion (i.e.: "need-to-know" and "right-to-know" access or dissemination);

d) Regularly provide access to, or dissemination of, the information in response to an interagency inquiry for law enforcement, homeland security, or public safety and analytical purposes, or provide

an assessment of the information to any agency, entity, individual, or the public, when credible information indicates potential imminent danger to life or property.

4.51 Tips and Leads Retention

a) VIC personnel will retain information only long enough to investigate a tip/lead or SAR information to determine its credibility and value and assign a "disposition" label (i.e.: undetermined or unresolved, cleared or unfounded, or under active investigation) so that an authorized user knows the status and purpose for the retention and will retain the information associated with the disposition label.

b) VIC personnel will adhere to and follow the VIC's physical, administrative, and technical security measures that are in place for the protection and security of tips and leads information. Tips, leads, and SAR information will be secured in a system that is equivalent to the system that secures data that rises to the level of reasonable suspicion.

4.52 The VIC will identify and review protected information that is originated from the VIC prior to sharing that information through the ISE. Further, the VIC will provide notice mechanisms, including but not limited to metadata or data field labels, that will enable ISE authorized users to determine the nature of the protected information and how to handle the information in accordance with the Department of Homeland Security's sensitive but unclassified (SBU) or controlled unclassified information (CUI) classifications.

4.53 The VIC's SAR process provides for human review and vetting to ensure that information is both legally gathered and, when applicable, determined to have a potential terrorism nexus. Law enforcement officers and appropriate center and participating agency staff will be trained to recognize those behaviors and incidents that are indicative of criminal activity related to terrorism.

4.54 The VIC's SAR process includes safeguards to ensure, to the greatest degree possible, that only information regarding individuals involved in activities that have been determined to be consistent with criminal activities associated with terrorism will be documented and shared through the ISE. These safeguards are intended to ensure that information that could violate civil rights (race, religion, national origin, ethnicity, etc.) and civil liberties (speech, assembly, religious exercise, etc.) will not be intentionally or inadvertently gathered, documented, processed, and shared.

5.0 Information Quality

5.10 Information gathering to include acquisition and access, and investigative techniques used by the VIC and authorized agencies providing information to the VIC are required to be in compliance with, and adhere to applicable regulations and guidelines, including, but not limited to:

a) Vermont Title 20 Chapters 111 and 113;

b) Applicable criminal intelligence guidelines established under the U.S. Department of Justice's (DOJ) *National Criminal Intelligence Sharing Plan* (NCISP);

c) Vermont Rules of Criminal Procedure and all prevailing case law;

d) 28 C.F.R. Part 23 regarding criminal intelligence information.

e) The OECD Fair Information Principles (under certain circumstances, there may be exceptions to the Fair Information Principles, based, for example, on authorities paralleling those provided in the federal Privacy Act; state, local, and tribal law; or center policy).

f) Criminal intelligence guidelines established under the U.S. Department of Justice's (DOJ) National Criminal Intelligence Sharing Plan (NCISP).

5.12 The VIC will make every reasonable effort to ensure that information sought or retained is:

a) Derived from dependable and trustworthy sources which may include commercial databases in addition to authorized agencies.

b) Accurate;

c) Current;

e) Complete, including the relevant context in which it was sought or received and other related information;

f) Merged with other information about the same individual or organization only by qualified individuals who have successfully completed a background check and appropriate security clearance, if applicable, and have been selected, approved, and trained accordingly.

5.13 Open Source Information, public information, or a source with an unknown reliability may be used, but it must: 1) be noted as such; and 2) contain a disclaimer that indicates the information may not be accurate and the recipient should independently verify before any action is taken based on the result of the source.

i. Information about an individual or organization from two or more sources will not be merged unless there is sufficient identifying information to reasonably conclude that the information is about the same individual or organization.

ii. The set of identifying information sufficient to allow merging will consist of available attributes that can contribute to higher accuracy of match, but should have at least three matches.

iii. If the matching requirements are not fully met but there is an identified partial match, the information may be associated if accompanied by a clear statement that it has not been adequately established that the information relates to the same individual or organization

5.14 Criminal Intelligence Information will include reliability labeling of source and content validity. All criminal intelligence submission will be reviewed by the VIC, to insure that it meets the requirements of 28 C.F.R. Part 23. The VIC will notify the contributing officer by electronic notification or phone if the report is found not to be in compliance and set a time for correction of information. If the deadline is not met, or the contributor cannot be reached in a timely manner, the information will be deleted without further warning.

5.15 At the time of retention in the system, the information will be labeled regarding its level of quality (accuracy, completeness, timeliness, and confidence (verifiability and reliability).

5.16 The VIC will conduct periodic data quality reviews of information that it generates and make every reasonable effort to ensure that the information will be corrected, deleted from the system, or not used when the VIC identifies information: 1) that is erroneous, misleading, obsolete, or otherwise unreliable; 2) that the VIC did not have authority to gather the information or to provide the information to another agency; or 3) the VIC used prohibited means to gather the information (except when the VIC's information did not act as the agent of the VIC in gathering the information).

5.17 Originating agencies external to the VIC are responsible for reviewing the quality and accuracy of the data provided to the VIC. The VIC will review the quality of information it has received from an originating agency and advise the appropriate contact person in the originating agency, in writing or electronically, if its data is alleged, suspected, or found to be inaccurate, incomplete, out of date, or unverifiable.

5.18 The VIC will make every reasonable effort to ensure that information maintained by the VIC will be corrected when possible or deleted from the VIC's system when the VIC learns that:

a) The information is erroneous, misleading, obsolete, unreliable, improperly merged or lacks adequate context; such that the rights of the individual may be affected;

b) The source of the information did not have authority to gather the information or to provide the information to the VIC, except when the source did not act as an agent to a bona fide law enforcement officer, and only if the rules of criminal procedure and prevailing state and federal case laws allows it, and only after consultation with the Department Legal Counsel;

c) The source of the information used prohibited means to gather the information, except when the source did not act as an agent of a bona fide law enforcement officer.

5.19 The VIC will advise the appropriate authorized agency who provided the information if its data needs to be corrected or deleted.

5.20 The VIC will advise recipient agencies when information previously provided to them is deleted or changed by the VIC because the information is determined to be erroneous, includes incorrectly merged information, is out of date, cannot be verified, or lacks adequate context such that the rights of the individual may be affected.

5.21 The VIC will establish security safeguards both physical and electronic to ensure that only authorized users are allowed to add, change, or delete information in the databases system maintained by the VIC.

6.0 Collation and Analysis of Information

6.10 Collation and analysis

a) Information as defined by Section 3.0 sought or received by the VIC or from other sources will only be analyzed for purposes defined by Section 4.0:

i. By qualified individuals, who have successfully completed a background check and appropriate security clearance, if applicable, and have been selected, approved, and trained accordingly.

ii. To provide tactical and/or strategic intelligence on the existence, identification, and capability of individuals and organizations suspected of having engaged in or engaging in criminal activities generally and,

iii. To further crime prevention, enforcement, force deployment, or prosecution objectives and priorities established by the Vermont Department of Public Safety.

iv. Or for activity which may pose a threat to the public safety as defined in 4.10(a).

b) Information sought or received by the VIC or other sources will not be analyzed or combined in a manner or for a purpose that violates Subsection 4.10

7.0 Sharing and Disclosure of Information

7.10 Credentialed, role-based access criteria will be used by the VIC, as appropriate, to control:

a) The information to which a particular group or class of users can have access based on the group or class.

b) The information a class of users can add, change, delete, or print.

c) To whom, individually, the information can be disclosed and under what circumstances.

7.11 The VIC adheres to the current version of the ISE-SAR Functional Standard for its suspicious activity reporting (SAR) process, including the use of a standard reporting format and commonly accepted data collection codes and a sharing process that complies with the ISE-SAR Functional Standard for suspicious activity potentially related to terrorism.

7.12 Information disclosed or shared by the VIC will have labeling consistent DHS classifications.

7.13 Sharing information within the VIC and with other justice system partners

a) Access to information retained by the VIC will only be provided to persons within the VIC or other governmental agencies who are authorized to have access and only for legitimate law enforcement, public protection, public prosecution, public health, or justice purposes and only for the performance of official duties in accordance with the law and procedures applicable to the agency for whom the person is working.

b) An audit trail will be kept of access by, usage, modification and dissemination of information.

c) Agencies external to the VIC may not disseminate information received from the VIC without prior approval from the originator of the information.

7.14 Sharing information with those responsible for public protection, safety, or public health

a) The VIC may authorize the release of information retained by the VIC to be disseminated to individuals, as defined in Section 7.13, and individuals in public or private entities,

only for public protection and safety in the performance of official duties in accordance with applicable laws and procedures.

b) An audit trail will be kept of the access by or dissemination of information to such persons.

7.15 Sharing information for specific purposes

a) Information gathered and retained by the VIC may be disseminated for specific purposes upon request by persons authorized by law to have such access and only for those users or purposes specified in the law.

b) The agency shall not confirm the existence or nonexistence of information to any person or agency that would not be eligible to receive the information itself.

c) An audit trail of the persons requesting data and of what type of information was disseminated to them will be kept for a minimum of 5 years.

7.16 Disclosing information to the public in the aid of investigation

a) Information gathered and retained by the VIC may be disclosed to a member of the public or media only if the information meets the legal definition of a non-exempt public record, or if the information can legally be released in the aid of an investigation or public safety as defined by Vermont law. Vermont's public records law is located in Title 1, Chapter 5, Subchapter 3 of the Vermont Statutes. Copies of photographs or imaged likenesses of a person to whom licenses permits or non-driver identification cards have been issued shall not be disclosed except as authorized by 23 V.S.A. § 104.

b) The VIC shall not confirm the existence or nonexistence of information to any person or agency that would not be eligible to receive the information itself.

c) An audit trail will be kept of all requests and of what information is to be disclosed to a member of the public or media

7.17 Information gathered or collected and records retained by the VIC will not be

a) Sold, published, exchanged, or disclosed for commercial purposes.

b) Disclosed or published without prior notice to the originating agency that such information is subject to disclosure or publication, unless disclosure is agreed to as part of the normal operations of the agency.

c) Disseminated to persons not authorized to access or use the information.

7.18 Disclosing information to the individual about whom information has been gathered

a) Upon satisfactory verification of his or her identity and subject to the conditions specified in (c), an individual is entitled to know the existence of and to review the information about him or her that has been gathered and retained by the VIC. The individual may obtain a copy of the information for the purpose of challenging the accuracy or completeness of the information. The VIC's response to the request for information will

be made to the requesting individual by the Department of Public Safety's General Counsel or the VIC Privacy Officer within a reasonable amount of time (thirty (30) days) and in a form that is readily intelligible to the individual. If the information does not originate with the VIC, the requestor will be referred to the originating agency, if appropriate or required, or the VIC will notify the source agency of the request and its determination that disclosure by the VIC or referral of the requestor to the source agency was neither required nor appropriate under applicable law.

b) The existence, content, and source of the information will not be made available to an individual if they are exempt from disclosure under Title 1, Chapter 5, Subchapter 3 of the Vermont Statutes, or if they are exempt from disclosure under Title 9, Chapter 62, Subchapter 3, including situations in which:

i. Disclosure would interfere with, compromise, or delay an ongoing investigation or prosecution;

ii. Disclosure would endanger the health or safety of an individual, organization, or community;

iii. The information is in a criminal intelligence system, or;

iv. The information relates to 20 V.S.A. § 2056f. (*Dissemination of criminal history records and criminal convictions records to an individual)*;

v. The information is the property of a source that does not reside within the VIC.

c) If an individual has objections to the accuracy or completeness of the information retained about him or her, the individual shall submit the objection to the Director of the VIC at the following e-mail address: DPS.VIC@vermont.gov. The Commander shall in turn forward the complaint to the VIC Privacy Officer and the Department of Public Safety's General Counsel. The Privacy Officer will notify the person filing the objection that the complaint has been received within thirty (30) days. The individual will be given reasons if requests for correction are denied. The individual will also be informed of the procedure for appeal when the VIC has declined to correct challenged information to the satisfaction of the individual about whom the information relates.

d) A record will be kept of all requests and of what information is disclosed to an individual.

8.0 Information Retention and Destruction

8.10 Review of information regarding retention

a) Intelligence information will be reviewed for purging every five (5) years, or as required by the federal code of regulation, 28 C.F.R. Part 23.

b) All applicable tips submitted via TipSoft are subject to automatic purging every 60 months (5 years). SAR information will be reviewed for purging at a point no greater than one year. If the information is found to be unsubstantiated, it will be subject to purging as soon as practicable.

c) A record of information to be reviewed for retention will be maintained by the VIC, and for appropriate system(s), notice will be given to the submitter at least 30 days prior to the required review and validation/purge date.

d) When information has no further value or meets the criteria for removal under applicable law, it will be purged, destroyed, and deleted, or returned to the submitting source if required.

8.12 Destruction of information

a) The VIC will delete information, unless it is updated, every five (5) years, and/or as required by 28 C.F.R. Part 23.

b) A record of information to be purged will be reviewed by the VIC within 30 days of the required purge date.

c) If the VIC does give prior "Notice of the Pending Purge" or deletion, permission to destroy or return the information record will be presumed if the record is not updated within the specified time period.

d) To satisfy the integrity and completeness of the purged information from appropriate systems, no record of the purged information will be maintained by the VIC, with the exceptions of information related to subsection 8.13.

8.13 Destruction of classified national security information

Classified information maintained by the VIC that is designated as Secret and above will be audited on an annual basis. This audit will:

a) Determine if there is a continuous use/need for each classified document stored in the security container.

b) Ensure that ALL classified materials being retained have the appropriate classified cover sheets attached.

c) Ensure that ALL classified materials being retained are properly marked.

d) Ensure that ALL Secret and Top Secret materials are recorded on Classified Material Control Inventory Form CD-481.

e) Ensure that ALL Secret/Top Secret materials selected for destruction are recorded on the form CD-481 and are destroyed by approved methods.

9.0 Accountability and Enforcement

9.10 Governance and Oversight

a) The VIC is overseen and operated by the Vermont State Police. A VSP Lieutenant is assigned as the director of the VIC. A VIC member, sworn or non-sworn will be appointed

by the Lieutenant to serve as the Privacy Officer. The Privacy Officer is responsible for the direct oversight of the privacy policy, which ensures privacy and civil rights are protected.

9.20 Information system transparency

a. The VIC will be open with the public regarding information and intelligence collection practices. The VIC's web page includes the "Statement of Purpose" as described Section 1.0. The web address for the page is: http://vsp.vermont.gov/bci/specialinvestigations/vic

b. The VIC's privacy policy will be made available upon request. The web page will provide contact information and meet the applicable requirements of Title 1, Chapter 5, Subchapter 3 of the Vermont Statutes.

c. The Director of the VIC will appoint a Privacy Policy Officer within the VIC to assist in the development and review of this policy and assist with the requirements of section (e).

d. The Privacy Officer shall be trained as described in Sections 10.0 through 10.30 of this policy.

e. The Privacy Officer of the VIC will be responsible for the following: 1) community relations; 2) ensuring that privacy and civil rights are protected as provided in this policy and by the VIC's information gathering and collection, retention, and dissemination processes and procedures; and 3) receiving reports regarding alleged errors and violations of the provisions of this policy. The Director and the Privacy Officer will receive and coordinate complaint resolution under the VIC's redress policy, serving as the liaison for the Information Sharing Environment, ensuring that privacy protections are implemented through efforts such as training, business process changes, and system designs that incorporate privacy enhancing technologies, annually reviewing and recommending updates to the policy in response to changes in law and implementation experience, including the results of audits and inspections, and receiving and responding to inquiries and complaints about privacy, civil rights, and civil liberties protections in the VIC's information system(s). Prior to responding, the Director shall confer with the Department's General Counsel in accordance with Section 5.0. Both the Director and the Privacy Officer can be contacted at the following address: DPS.VIC@vermont.gov.

f. The VIC Director ensures that enforcement procedures and sanctions outlined in 9.30 are adequate, and that procedures are followed and sanctions are enforced.

9.30 Accountability for Activities

a) The Director of the VIC shall have primary responsibility for the operation of the VIC, it's justice systems, operations, coordination of personnel; the receiving, seeking, retention, evaluation, information quality, analysis destruction, sharing, and disclosure of information; and the enforcement of this policy.

b) The VIC will establish procedures, practices, system protocols, and use of software, information technology tools, and physical security measures that protect the information from unauthorized access, modification, theft, or sabotage, whether internal or external, and whether due to natural or human-caused disasters or intrusions. The electronic methods and techniques used shall be consistent with that of Vermont Department of

Public Safety Policy and procedural guidelines for general use of systems and internet services. Access to the VIC's databases from outside the facility will be allowed only over secure networks.

c) The VIC will store information in a manner such that it cannot be added to, modified, accessed, destroyed, or purged except by personnel authorized to take such actions as designated by the Director of the VIC. The Director will appoint a Security Officer within the VIC to assist with the requirements of sections 9.20(b), (c), (d), (e) and (f).
    i. The VIC will secure tips, leads, and SAR information in a separate repository system using security procedures and policies that are the same as or similar to those used for a system that secures data rising to the level of reasonable suspicion under 28 CFR Part 23.

d) The VIC will adopt and follow procedures and practices by which it can ensure and evaluate the compliance of users with their systems, in provisions of this policy and applicable law. This will include logging access of these systems, and periodic auditing of these systems. These audits will occur at least annually and a record of the audit will be maintained by the Director (or his designee) of the VIC.

e) Access to VIC information will be granted only to VIC personnel whose positions and job duties require such access; who have successfully completed a background check and appropriate security clearance, if applicable; and who have been selected, approved, and trained accordingly.

f) To prevent public records disclosure, risk and vulnerability assessments will not be stored with publicly available data.

g) The VIC will require all individuals authorized to access the VIC's systems to acknowledge in writing their receipt of the policy and agreement to comply with its provisions.

h) The VIC personnel or other authorized users shall report errors and suspected or confirmed violations of center policies relating to protected information to the VIC's Privacy Officer.

i) The VIC will annually have an audit and inspection of the information contained in its criminal intelligence system be conducted. This audit will be conducted in such a manner so as to protect the confidentiality, sensitivity, and privacy of the VIC's criminal intelligence system.

j) The VIC will annually, with additional random checks, review the provisions protecting privacy, civil rights, and civil liberties in its policies and make appropriate changes in response to updates in applicable law and public expectations. The VIC shall annually submit a copy of the privacy policy to the Vermont Intelligence Center oversight committee. Acceptance of the review by oversight committee must be granted prior to its implementation. The Director of the VIC will maintain records of the annual review and make them available for the audit when requested.

k) The VIC or investigating officer, will notify an individual about whom personal information was or is reasonably believed to have been obtained by an unauthorized person and access to which threatens the physical or financial harm to the person. The

notice will be made promptly and without unreasonable delay following discovery or notification of the access to the information, consistent with the legitimate needs of law enforcement to investigate the release or any measures necessary to determine the scope of the release of information and if necessary, to reasonably restore the integrity of any information system affected by this release. Notice need not be given if meets the criteria specified in Subsection 7.50 (b).

l) If an individual has a complaint with regard to the accuracy or completeness of terrorism-related protected information that:

a. Is exempt from disclosure;

b. Has been or may be shared through the ISE and;

i. Is held by the VIC and

ii. Allegedly has resulted in demonstrable harm to the complainant;

c. The VIC will inform the individual of the procedure for submitting (if needed) and resolving such complaints. Complaints will be received by the VIC Privacy Officer or Commander at the following address: DPS.VIC@vermont.gov attention Privacy Officer. The Privacy Officer or Director of the VIC will acknowledge the complaint and state that it will be reviewed, but will not confirm the existence or nonexistence of the information to the complainant unless otherwise required by law. If the information did not originate with the VIC the Privacy Officer or Director of the VIC will notify the originating agency in writing or electronically within ten days and, upon request, assist such agency to correct any identified data/record deficiencies, purge the information, or verify that the record is accurate. All information held by the VIC that is the subject of a complaint will be reviewed within 30 days and confirmed or corrected/purged if determined to be inaccurate, incomplete, to include incorrectly merged information, or to be out of date. If there is no resolution within 30 days, the VIC will not share the information until such time as the complaint has been resolved. A record will be kept by the VIC of all complaints and the resulting action taken in response to each complaint.

m) To delineate protected information shared through the ISE from other data, the VIC maintains records of agencies sharing terrorism-related information and employs system mechanisms to identify the originating agency when the information is shared.

9.40 Enforcement

a) If an authorized user is found to be in noncompliance with the provisions of this policy regarding the collection, use, retention, destruction, sharing, classification, or disclosure of information, the VIC shall:

i. Suspend or discontinue access to information by the VIC personnel, the participating agency, or the authorized user.

ii. Apply administrative actions or sanctions as provided by Vermont State Police rules and regulations or as provided in agency personnel policies.

iii. If user is from an agency external to the Vermont State Police, request that the user's employer initiate disciplinary proceedings to enforce the policy's provisions.

iv. Refer the matter to appropriate authorities for criminal prosecution, as necessary, to effectuate the purposes of the policy.

9.50 Right to Restrict Access

The VIC reserves the right to restrict the qualifications and number of personnel having access to center information and to suspend or withhold service and deny access to any participating agency or participating agency personnel accused of violating the VIC's privacy policy.

10.0 Training

10.1 Personnel requiring training and frequency

a) The VIC will require the following individuals to participate in training programs regarding the implementation of and adherence to the privacy, civil rights, and civil liberties policy:

i. All assigned personnel of the VIC.

ii. Department personnel providing information technology service to the systems under the VIC's control.

iii. Private or commercial personnel providing information technology service to the VIC. This training is not intended to prevent or replace the requirements of Departments VIBRS User agreement.

iv. Staff in other public agencies or private contractors providing services to the VIC.

v. Users who are not employed by the VIC or a contractor

b) VIC personnel shall receive policy training during their initial assignment to the VIC and will then receive annual training following the review specified in subsection 9.20(j)

c) The VIC will provide special training to personnel authorized to share protected information through the ISE regarding the VIC requirements and policies for collection, use and disclosure of protected information.

d) Personnel within the VIC assigned as the Privacy and/or Security Officer shall receive the additional training appropriate to the position. If the officer is not able to receive the training prior to the appointment, an appointed officer may fill the position. However, all actions will be monitored by the Director of the VIC. This does not preclude receiving the appropriate training as soon as practical.

10.2 Training program content will include:

a) Purposes of the privacy, civil rights, and civil liberties protection policy; and

b) Substance and intent of the provisions of the policy relating to the collection, use, analysis, retention, destruction, sharing, and disclosure of information retained by the VIC

c) The impact of improper activities associated with information accessible within or through the VIC; and

d) The nature and possible sanctions for policy violations, including possible administrative, civil and criminal liability; and

e) Originating and participating agency responsibilities and obligations under applicable law and policy; and

f) How to implement the policy in the daily work all users; and

g) Mechanisms for reporting violations of the VIC privacy protection policies and procedures.

10.30 Record of Training

A record of completion of the initial and annual privacy training and written acknowledgement as described in section 9.20(g) will be maintained by the Privacy Officer.

Effective August 2010
Revised August 2012
Revised January 2014
Revised July 2016

VSP-DIR-418

Automatic License Plate Reader (ALPR)

1.0 PURPOSE

1.1 To provide uniform and proper use of Automatic License Plate Reader (ALPR) equipment by Vermont State Police members. ALPR technology uses specialized digital cameras and computers to quickly capture large numbers of photographs of license plates, convert them to text and compare them quickly to a large list of plates of interest. ALPR systems can identify a target plate within seconds of contact with it, allowing law enforcement to identify target vehicles that might otherwise be overlooked.

2.0 POLICY

2.1 All members using ALPR equipment shall be certified by the Vermont Criminal Justice Training Council in its use and be familiar with this policy.

2.2 All data and digital images contained in the ALPR system are the property of the Department of Public Safety and shall not be released or disseminated without first completing the Vermont License Plate Reader Request for Information/Entry Form. All data and images will be stored on a secure DPS server.

3.0 DEFINITIONS

(1) "Active data" is distinct from historical data as defined in subdivision (3) of this subsection and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(2) "Automated license plate recognition system" or "ALPR system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.

(3) "Historical data" means any data collected by an ALPR system and stored on the statewide ALPR server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(4) "Law enforcement officer" means a state police officer, municipal police officer, motor vehicle inspector, capitol police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Training Council as having satisfactorily completed the approved training programs required to meet the minimum training standards applicable to that person under 20 V.S.A. § 2358.

(5) "Legitimate law enforcement purpose" applies to access to active or historical data and means investigation, detection, analysis, or enforcement of a crime, traffic violation, or parking violation or operation of AMBER alerts or missing or endangered person searches.

(6) "Vermont Intelligence Center Analyst" means any sworn or civilian employee who through his or her employment with the Vermont Intelligence Center (VIC) has access to secure databases that support law enforcement investigations.

4.0 PROCEDURE

4.1 Members selected for ALPRs will not have had any crashes in the past two years and will have an overall good driving record.

4.2 Members assigned to patrol vehicles equipped with ALPR equipment shall ensure that all required pre-operational checks are performed in accordance with the manufacturer's recommendations.

4.3 Members utilizing ALPR equipment shall be sure that the most current "hot" list has been downloaded to the MDC unit.

4.4 Members utilizing ALPR equipment shall confirm hits through an active database (VLETS/NCIC) before enforcement action is taken on any stolen vehicles, delinquent citation, expired registration, suspended operator or warrant.

4.5 Positive responses or hits from the ALPR system are not to be considered reasonable suspicion for stopping, searching, or detaining a vehicle and its occupant(s) and that further investigation, reasonable suspicion and/or confirmation must take place prior to stopping, searching or detaining a vehicle and its occupant(s).

4.6 Access to Statewide ALPR server

(1) The State of Vermont, Department of Public Safety, Division of Criminal Justice Services will maintain a statewide ALPR server.

(2) The statewide ALPR server will be made available to law enforcement agencies and other interested justice partners only as allowed by applicable Vermont Statute.

5.0 OPERATION

5.1 Responsibilities of Operators

(1) Members shall be responsible for operation, care and maintenance of assigned ALPR equipment. Maintenance shall be performed in accordance with manufacturer's recommendations.

(2) At the start of each shift, members shall determine that ALPR equipment is working satisfactorily and complete a standard pre-operational system check. Operational system checks will be done as necessary during the course of the shift (i.e., if maintenance is required, completion of such maintenance should be noted).

(3) A shift supervisor and the Office of Technology Management will be notified, as soon as possible, if any problems are discovered with operation of the ALPR equipment.

(4) The ALPR should be active at all times while on duty except for maintenance issues and any conflicts that do not allow other programs to work on the MDC.

(5) Members shall not erase, or alter any ALPR information.

(6) The use of the ALPR equipment shall be noted on all traffic tickets, written warnings and affidavits. The circumstance code "LPR" will be utilized in the RMS system on all cases that involve the use of an ALPR system.

(7) In the event a member assigned an ALPR becomes involved in a pursuit they will, at the direction of their supervisor, become a secondary pursuit vehicle (VSP-DIR-414) as soon as is reasonably feasible.

(8) (A) Deployment of ALPR equipment is intended to provide access to law enforcement reports of wanted or stolen vehicles and wanted persons and to further other legitimate law enforcement purposes. Use of ALPR systems and access to active data are restricted to legitimate law enforcement purposes.

(B) Active ALPR data may be accessed by a law enforcement officer operating the ALPR system only if he or she has a legitimate law enforcement purpose for the data. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(C) Requests to review active data shall be in writing and include the name of the requester, the law enforcement agency the requester is employed by, and the law enforcement agency's Originating Agency Identifier (ORI) number. The request shall describe the legitimate law enforcement purpose. The written request and the outcome of the request shall be transmitted to the VIC and retained by the VIC for not less than three years.

(D) Access to active data shall be limited to designated personnel who have been provided account access by the Office of Technology Management only after being certified by the Vermont Criminal Justice Training Council to operate ALPR systems. Access to active data shall be restricted to data collected within the past seven days.

5.2 Responsibilities of Supervisors

(1) Supervisors shall ensure that members who utilize ALPR equipment comply with established policies, procedures and guidelines.

(2) Supervisors will randomly review cases and data produced by members who utilize ALPR equipment for the purpose of ensuring compliance with established policies, and to identify material that would be appropriate for training.

(3) The Office of Technology Services shall be responsible for the maintenance of the statewide ALPR server. Records shall be maintained for a period of eighteen months.

Effective May 1, 2011

Revised June 17, 2014